

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

SAMANTHA ROOP,

Plaintiff - Appellant,

v.

NICHOLAS JAMES DESOUSA,

Defendant - Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT RICHMOND

JOINT APPENDIX - VOLUME I OF II
(Pages 1 - 400)

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**U.S. District Court
Eastern District of Virginia - (Richmond)
CIVIL DOCKET FOR CASE #: 3:21-cv-00675-DJN**

Roop v. Desousa
Assigned to: District Judge David J. Novak
Referred to: Magistrate Judge Elizabeth W (MJ)Hanes
(Settlement)
Demand: \$5,000,000
Case in other court: 23-01376

Date Filed: 10/26/2021
Date Terminated: 03/10/2023
Jury Demand: Both
Nature of Suit: 350 Motor Vehicle
Jurisdiction: Diversity

City of Richmond Circuit, CL21-97-00002

Cause: 28:1441 Notice of Removal-Auto Negligence

Plaintiff

Samantha Roop

represented by **Samantha Beth Cohn**

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TERMINATED: 03/16/2022

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/26/2021	<u>1</u>	Notice of Removal (Filing Fee: \$402.00, Receipt Number: BVAEDC-8068832), filed by Nicholas James Desousa. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Keeney, Carter) (Entered: 10/26/2021)
10/26/2021	<u>2</u>	ANSWER to Complaint by Nicholas James Desousa.(Keeney, Carter) (Entered: 10/26/2021)
10/26/2021		Initial Case Assignment to District Judge David J. Novak. (smej,) (Entered: 10/26/2021)
11/04/2021	<u>3</u>	Order Setting PRETRIAL Conference - Initial Pretrial Conference set for 12/13/2021 at 04:30 PM in Richmond Telephonically before District Judge David J. Novak. Signed by Patrick F. Dillard with permission of District Judge David J. Novak on 11/4/2021. (cgar) (Entered: 11/04/2021)
11/05/2021	<u>4</u>	MOTION to Substitute Attorney by Samantha Roop. (Wolf, Nikita) (Entered: 11/05/2021)
11/08/2021	<u>5</u>	ORDER (Granting Substitution of Counsel) - This matter comes before the Court on Plaintiffs Motion titled Substitution of Counsel for Plaintiff (ECF No. 4), requesting the Clerk to strike the appearance of Theodore Briscoe, III, on her behalf and substitute with Nikita Wolf of the same law firm, Geoff McDonald & Associates, PC. Upon consideration of the matter, the Court hereby GRANTS IN PART and DENIES IN PART Plaintiffs request. The Clerk shall terminate Mr. Briscoe's representation of Plaintiff and substitute Ms. Wolf. However, the Clerk shall not strike Mr. Briscoe's appearance from the record. Signed by District Judge David J. Novak on 11/8/2021. (smej,) (Entered: 11/08/2021)

11/09/2021		Reset Hearing: Initial Pretrial Conference RESET for 12/20/2021 at 01:15 PM in Richmond Telephonically before District Judge David J. Novak. (cgar) (Entered: 11/09/2021)
11/15/2021	6	Rule 26 Disclosure by Samantha Roop. (Wolf, Nikita) (Entered: 11/15/2021)
12/16/2021	7	REFERRAL ORDER - This case is hereby REFERRED to United States Magistrate Judge Elizabeth W. Hanes for settlement. The parties shall be responsible for contacting the chambers of the Magistrate Judge to schedule the settlement conference. If amenable to the Magistrate Judge and otherwise consistent with their calendar, the Court orders the parties to schedule the settlement conference before April 1, 2022. Signed by District Judge David J. Novak on 12/15/2021. Copy of order sent to the chambers of Magistrate Judge Hanes as directed.(jpow,) (Entered: 12/16/2021)
12/16/2021		Case Referred to Magistrate Judge Elizabeth W. Hanes for settlement purposes. (jpow,) (Entered: 12/16/2021)
12/16/2021	8	SCHEDULING and PRETRIAL ORDER - Final Pretrial Conference set for 7/1/2022 at 10:00 AM; Jury Trial set for 7/22/2022 at 09:30 AM in Richmond Courtroom 6300 and Jury Selection set for 7/21/2022 at 09:30 AM all held in Richmond Courtroom 6300 before District Judge David J. Novak. Signed by District Judge David J. Novak on 12/15/2021. (cgar) (Entered: 12/16/2021)
12/17/2021	9	ORDER REGARDING PROCEDURES FOR SETTLEMENT CONFERENCE - The Court has scheduled this case for a settlement conference on March 22, 2022 at 9:30 A.M. At that time, the parties shall report to the chambers of Magistrate Judge Elizabeth W. Hanes. SEE ORDER FOR DETAILS. Signed by Magistrate Judge Elizabeth W. Hanes on 12/17/2021. (smej,) (Entered: 12/17/2021)
12/30/2021		Settlement Conference set for 3/22/2022 at 9:30 AM in Richmond Judges Chamber before Magistrate Judge Elizabeth W. Hanes. (mful) (Entered: 12/30/2021)
02/21/2022	10	Discovery Designation by Samantha Roop.(Wolf, Nikita) (Entered: 02/21/2022)
03/14/2022	11	(DISREGARD. SEE ECF #12) - First MOTION to Substitute Attorney <i>Nikita Wolf</i> by Samantha Roop. (Cohn, Samantha) Modified on 3/15/2022 (smej,). (Entered: 03/14/2022)
03/14/2022	12	First MOTION to Substitute Attorney <i>Nikita Wolf</i> by Samantha Roop. (Attachments: # 1 Proposed Order)(Cohn, Samantha) (Main Document 12 replaced on 3/15/2022) (smej,). (Entered: 03/14/2022)
03/16/2022	13	ORDER (Granting in Part and Denying in Part Motion to Substitute Counsel) - This matter comes before the Court on Plaintiff's motion for Substitution of Counsel (ECF No. 12), moving the Court to strike the appearance of Nikita Wolf, Esq. on her behalf and substitute Samantha Cohn of the same law firm, Geoff McDonald & Associates, PC. Upon consideration of the matter, the Court hereby GRANTS IN PART and DENIES IN PART Plaintiffs Motion. The Clerk shall terminate Ms. Wolf's representation of Plaintiff and substitute Mrs. Cohn. However, the Clerk shall not strike Ms. Wolf's appearance from the record. Signed by District Judge David J. Novak on 3/16/2022. (smej,) (Entered: 03/16/2022)
03/21/2022	14	First MOTION for Extension <i>Seeking Relief From Trial Schedule and Enlargement of Deadlines</i> by Samantha Roop. (Cohn, Samantha) (Entered: 03/21/2022)

03/22/2022		Minute Entry for proceedings held before Magistrate Judge Elizabeth W. Hanes: Settlement Conference held on 3/22/2022. (mful) (Entered: 03/23/2022)
03/23/2022	<u>15</u>	Memorandum in Opposition re <u>14</u> First MOTION for Extension <i>Seeking Relief From Trial Schedule and Enlargement of Deadlines</i> filed by Nicholas James Desousa. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Keeney, Carter) (Entered: 03/23/2022)
03/23/2022	<u>16</u>	ORDER (Denying Motion for Extension) - This matter comes before the Court on Plaintiffs Motion Seeking Relief from Trial Schedule and Enlargement of Deadlines. (ECF No. 14.) Upon review of the Motion and Defendants Response (ECF No. 15), the Court hereby DENIES the Motion as devoid of merit. Signed by District Judge David J. Novak on 3/23/2022. (smej,) (Entered: 03/23/2022)
03/28/2022	<u>17</u>	First MOTION to Voluntarily Dismiss by Samantha Roop. (Cohn, Samantha) (Entered: 03/28/2022)
03/28/2022	<u>18</u>	MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> by Nicholas James Desousa. (Keeney, Carter) (Entered: 03/28/2022)
03/28/2022	<u>19</u>	Memorandum in Support re <u>18</u> MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> filed by Nicholas James Desousa. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Keeney, Carter) (Entered: 03/28/2022)
03/29/2022		Set Hearing as to <u>17</u> First MOTION to Voluntarily Dismiss , <u>18</u> and MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> . Motion Hearing set for 4/13/2022 at 11:00 AM before District Judge David J. Novak. (cgar) (Entered: 03/29/2022)
03/31/2022	<u>20</u>	Withdrawal of Motion by Samantha Roop (Cohn, Samantha) (Entered: 03/31/2022)
03/31/2022	<u>21</u>	ORDER terminating <u>17</u> Motion to Voluntarily Dismiss and RESCHEDULING the Motion in Limine Hearing for May 3, 2022 a 11:00 a.m. Signed by District Judge David J. Novak on 3/31/2022. (cgar) (Entered: 03/31/2022)
03/31/2022		Reset Hearing as to <u>18</u> MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> . Motion Hearing reset for 5/3/2022 at 11:00 AM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 03/31/2022)
04/05/2022		Final Pretrial Conference reset for 7/13/2022 at 10:00 AM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 04/05/2022)
04/08/2022	<u>22</u>	Memorandum in Opposition re <u>18</u> MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> filed by Samantha Roop. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D)(Cohn, Samantha) (Entered: 04/08/2022)
04/12/2022	<u>23</u>	Reply Brief re <u>18</u> MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> filed by Nicholas James Desousa. (Keeney, Carter) Modified on 4/13/2022 (smej,). (Entered: 04/12/2022)
05/03/2022		Reset Hearing: Final Pretrial Conference reset for 7/15/2022 at 02:00 PM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 05/03/2022)
05/03/2022	<u>24</u>	Minute Entry for proceedings held before District Judge David J. Novak: Motion Hearing held on 5/3/2022 re <u>18</u> MOTION in Limine <i>to Exclude Dr. Guerette and his bills</i> filed by Nicholas James Desousa. Matter came on for motion hearing. Arguments heard. Order to enter. FPTC rescheduled for July 15 2022 at 2:00 p.m. (Court Reporter

		Melissa Custis, OCR.)(cgar) (Entered: 05/03/2022)
05/03/2022	<u>25</u>	MEMORANDUM ORDER (Granting in Part and Denying in Part Motion in Limine) - the Court hereby ORDERS as follows: The parties must meet and confer to determine the injuries for which the parties dispute causation, and those for which causation is not in dispute. Defendant's Motion (ECF. 18) is GRANTED IN PART and DENIED IN PART. The Final Pretrial Conference in this matter is rescheduled for July 15, 2022, at 2 p.m. . Signed by District Judge David J. Novak on 5/3/2022. (smej,) (Entered: 05/03/2022)
05/11/2022	<u>26</u>	NOTICE of Appearance by Samantha Beth Cohn on behalf of Samantha Roop (Cohn, Samantha) (Entered: 05/11/2022)
05/12/2022	<u>27</u>	Response re <u>25</u> Memorandum Order - Declaration of issues in dispute by Nicholas James Desousa. (Keeney, Carter) Modified on 5/13/2022 (smej,). (Entered: 05/12/2022)
05/13/2022	<u>28</u>	Order of Proof as to Witnesses and Evidence Witness List by Samantha Roop. (Cohn, Samantha) (Entered: 05/13/2022)
05/19/2022	<u>29</u>	Amended Order of Proof as to Witnesses and Evidence Witness List by Samantha Roop. (Cohn, Samantha) (Entered: 05/19/2022)
05/20/2022	<u>30</u>	offer of Proof As Required by order of May 3 Witness List by Nicholas James Desousa. (Keeney, Carter) (Entered: 05/20/2022)
05/23/2022	<u>31</u>	TRANSCRIPT of proceedings held on May 3, 2022, before Judge David J. Novak, Court Reporter Melissa Custis, Telephone number 804-916-2278. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 6/22/2022. Redacted Transcript Deadline set for 7/25/2022. Release of Transcript Restriction set for 8/22/2022. (Custis, Melissa) (Entered: 05/23/2022)
05/25/2022		On-The-Record Status Conference set for 5/27/2022 at 02:00 PM in Richmond Telephonically before District Judge David J. Novak. (cgar) (Entered: 05/25/2022)
05/27/2022		RESET Hearing - Final Pretrial Conference RESET for 7/12/2022 at 10:00 AM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 05/27/2022)
05/27/2022		Minute Entry for proceedings held before District Judge David J. Novak: On-The-Record Telephone Conference held on 5/27/2022. (Court Reporter Melissa Custis, OCR.)(cgar) (Entered: 05/27/2022)
05/27/2022	<u>32</u>	ORDER that the Final Pretrial Conference is hereby RESCHEDULED for 10 a.m. on July 12, 2022. Signed by District Judge David J. Novak on 5/27/2022. (jsmi,) (Entered: 05/27/2022)
05/27/2022	<u>33</u>	MEMORANDUM ORDER (Clarifying Parameters of Testimony of Dr. Nathan Guerette). This matter comes before the Court for pretrial management following a

		conference call with counsel on May 27, 2022, about the parameters of the testimony of Dr. Nathan Guerette. It is so ORDERED. Signed by District Judge David J. Novak on 5/27/2022. (sbea) (Entered: 05/27/2022)
06/08/2022	34	ORDER (Directing Jury Process) - The Court hereby DIRECTS the Clerk to empanel a jury venire of forty-five prospective jurors for Jury Selection on July 21, 2022. The parties indicated that they do not object to the Court striking unvaccinated individuals from the pool of potential jurors. Accordingly, for the reasons stated below and with the agreement of the parties, the Court hereby DIRECTS the Clerk to strike all members of the venire who indicate on their screening form that they have not received full vaccination for COVID-19. SEE ORDER FOR DETAILS. Signed by District Judge David J. Novak on 6/8/2022. (smej,) (Entered: 06/08/2022)
06/13/2022	35	<i>Plaintiff Witness & Exhibit List</i> by Samantha Roop.. (Cohn, Samantha) (Entered: 06/13/2022)
06/16/2022	36	Witness List by Nicholas James Desousa. (Keeney, Carter) (Entered: 06/16/2022)
06/16/2022	37	Exhibit List by Nicholas James Desousa.. (Keeney, Carter) (Entered: 06/16/2022)
06/16/2022	38	Discovery Designation by Nicholas James Desousa.(Keeney, Carter) (Entered: 06/16/2022)
06/17/2022	39	<i>Objections to Plaintiff's Witness and Exhibit List</i> by Nicholas James Desousa.. (Keeney, Carter) (Entered: 06/17/2022)
06/22/2022	40	<i>Rebuttal Witness List</i> by Samantha Roop. (Cohn, Samantha) (Entered: 06/22/2022)
06/27/2022	41	Objection to 37 Exhibit List filed by Samantha Roop. (Cohn, Samantha) (Entered: 06/27/2022)
06/28/2022	42	Statement of Undisputed Facts by Nicholas James Desousa. (Keeney, Carter) (Entered: 06/28/2022)
06/28/2022	43	MOTION to Withdraw as Attorney <i>as Co-Counsel - Frank Hupfl</i> by Samantha Roop. (Cohn, Samantha) (Entered: 06/28/2022)
06/29/2022	44	ORDER (Granting Motion to Withdraw) - This matter comes before the Court on Plaintiffs Notice of Withdrawal of Co-Counsel, moving to withdraw Frank Hupfl as counsel of record for Plaintiff (ECF No. 43). The Court hereby GRANTS the Motion (ECF No. 43) and DIRECTS the Clerk to terminate Mr. Hupfl as counsel of record for Plaintiff. Signed by District Judge David J. Novak on 6/29/2022. (smej,) (Entered: 06/29/2022)
06/30/2022	45	Proposed Joint Jury Instructions by Nicholas James Desousa. (Keeney, Carter) Modified on 7/5/2022 (smej,). (Entered: 06/30/2022)
06/30/2022	46	Proposed Voir Dire by Nicholas James Desousa. (Keeney, Carter) (Entered: 06/30/2022)
06/30/2022	47	Opposition re 45 Proposed Joint Jury Instructions by Nicholas James Desousa. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Keeney, Carter) Modified on 7/5/2022 (smej,). (Entered: 06/30/2022)
06/30/2022	48	NOTICE of Appearance by Brandon Kyle Galindo on behalf of Samantha Roop (Galindo, Brandon) (Entered: 06/30/2022)
06/30/2022	49	Proposed Voir Dire by Samantha Roop. (Cohn, Samantha) (Entered: 06/30/2022)

07/02/2022	<u>50</u>	Opposition re <u>45</u> Proposed Joint Jury Instructions filed by Samantha Roop. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Cohn, Samantha) Modified on 7/5/2022 (smej,). (Attachment 1 replaced on 7/5/2022) (smej,). (Attachment 2 replaced on 7/5/2022) (smej,). (Additional attachment(s) added on 7/5/2022: # <u>3</u> Exhibit 3) (smej,). (Entered: 07/02/2022)
07/11/2022	<u>51</u>	ORDER (Directing Clerk to Procure Juror Meals) - This matter comes before the Court for pretrial management. Due to the ongoing threat posed by the outbreak of the Coronavirus-2019 ("COVID-19"), the Court finds that an emergency hardship situation exists that requires accommodations to be taken by the Court to protect the health and safety of the jurors. Therefore, to minimize the exposure of the jurors to COVID-19, the Court hereby ORDERS that lunch will be provided for the jurors beginning on Friday, July 22, 2022. Accordingly, the Clerk is hereby DIRECTED to procure juror meals as necessary. Signed by District Judge David J. Novak on 7/11/2022. (smej,) (Entered: 07/11/2022)
07/11/2022	<u>52</u>	TRIAL BRIEF by Nicholas James Desousa. (Attachments: # <u>1</u> Exhibit A)(Keeney, Carter) (Entered: 07/11/2022)
07/12/2022	<u>53</u>	<i>Amended Submission of Exhibit List</i> Exhibit List by Samantha Roop.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11)(Cohn, Samantha) (Entered: 07/12/2022)
07/12/2022	<u>54</u>	Minute Entry for proceedings held before District Judge David J. Novak:Final Pretrial Conference held on 7/12/2022. Matter came on for final pretrial conference. Counsel and court addressed pending motions and trial procedures. Order to enter. FPTC continued to July 19, 2022 at 3:30 p.m. (Court Reporter Tracy Stroh, OCR.)(cgar) (Entered: 07/12/2022)
07/12/2022		Continued Final Pretrial Conference set for 7/19/2022 at 03:30 PM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 07/12/2022)
07/12/2022	<u>55</u>	ORDER (Clarifying Parameters of Evidence) that Plaintiff may not present any evidence of Plaintiffs future damages, because she did not adequately notify Defendant of evidence or expert testimony on this issue. As it pertains to Plaintiff's Interstim device, the testimony of Dr. Nathan Guerette shall be limited to his observations of whether the Interstim was functioning during the course of his treatment of Plaintiff. He may not testify to the cause of the device not functioning nor discuss any readouts from the device. Signed by District Judge David J. Novak on 7/12/22. (adun,) (Entered: 07/12/2022)

07/13/2022	<u>56</u>	TRANSCRIPT of proceedings held on July 12, 2022, before Judge David J. Novak, Court Reporter/Transcriber Tracy Stroh, Telephone number 804-916-2267. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 8/12/2022. Redacted Transcript Deadline set for 9/12/2022. Release of Transcript Restriction set for 10/11/2022.(stroh, tracy) (Entered: 07/13/2022)
07/14/2022	<u>57</u>	Statement of Undisputed Facts by Nicholas James Desousa. (Keeney, Carter) (Entered: 07/14/2022)
07/14/2022	<u>58</u>	ORDER (Directing Clerk to File Jury Documents) - This matter comes before the Court on the parties' Proposed Joint Jury Instructions (ECF No. 45). After consideration of the parties' submissions, the Court has drafted proposed jury instructions to be used during the trial for this action. Accordingly, the Court hereby DIRECTS the Clerk to file, as Exhibits 1 to 7 of this Order. If either party objects to these instructions, the Court will address their objections during the Second Final Pretrial Conference on July 19, 2022. SEE ORDER FOR DETAILS. Signed by District Judge David J. Novak on 7/14/2022. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7) (smej,) (Entered: 07/14/2022)
07/15/2022	<u>59</u>	Joint Exhibit List by Nicholas James Desousa.. (Keeney, Carter) (Entered: 07/15/2022)
07/15/2022	<u>60</u>	Objections to Plaintiff's Proposed Exhibit List by Nicholas James Desousa.. (Keeney, Carter) (Entered: 07/15/2022)
07/15/2022	<u>61</u>	Objection to <u>59</u> Exhibit List filed by Samantha Roop. (Cohn, Samantha) (Entered: 07/15/2022)
07/15/2022	<u>62</u>	TRIAL BRIEF by Samantha Roop. (Cohn, Samantha) (Entered: 07/15/2022)
07/18/2022	<u>63</u>	ORDER (Directing Clerk to File Jury Documents) - This matter comes before the Court on the parties' Proposed Joint Jury Instructions (ECF No. 45). The Court previously directed the jury clerk to file its proposed jury instructions for the parties' review. (ECF No. 58.) In preparation for the Second Final Pretrial Conference on July 19, 2022, the Court has drafted alternate versions of its proposed closing instructions for Phase Two (Damages) of the trial and Phase Two verdict form, to be used in the event that the jury finds that Defendant caused Plaintiff's undisputed injuries but not her disputed injuries. Accordingly, the Court hereby DIRECTS the Clerk to file, as Exhibits 1 and 2 of this Order, the alternate versions of the Court's proposed closing instructions for Phase Two and Phase Two Verdict form. Signed by District Judge David J. Novak on 7/18/2022. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (smej,) (Entered: 07/18/2022)
07/19/2022	<u>64</u>	ORDER (Rescheduling Trial) - This matter comes before the Court for pretrial management. For the reasons stated on the record during the conference call between the parties and the Court on July 19, 2022, the Court hereby RESCHEDULES the trial in this matter. Jury selection shall occur on September 12, 2022, to be followed by opening statements and evidence on September 13, 2022, and concluding on September 14, 2022. Additionally, the Court hereby SCHEDULES a Final Pretrial Conference on

		September 1, 2022, at 2 p.m. Signed by District Judge David J. Novak on 7/19/2022. (smej,) (Entered: 07/19/2022)
07/19/2022		Minute Entry for proceedings held before District Judge David J. Novak:On-The-Record Telephone Conference held on 7/19/2022. (Court Reporter Melissa Custis, OCR.)(cgar) (Entered: 07/21/2022)
07/22/2022	65	ORDER. The Court hereby ORDERS that lunch will be provided for the jurors beginning on September 13, 2022 through September 14, 2022. The Clerk is DIRECTED to procure juror meals as necessary. See Order for details. Signed by District Judge David J. Novak on 7/22/2022. (jsmi,) (Entered: 07/22/2022)
07/22/2022	66	ORDER. The Court hereby DIRECTS the Clerk to strike all members of the venire who indicate on their screening form that they have not received full vaccination for COVID-19. Jury selection on September 12, 2022, will proceed as detailed in Order. Signed by District Judge David J. Novak on 7/22/2022. (jsmi,) (Entered: 07/22/2022)
08/04/2022		RESET Hearings Final Pretrial Conference reset for 9/1/2022 at 02:00 PM; Jury Selection reset for 9/12/2022 at 09:30 AM and Jury Trial reset for 9/13-14/2022 at 09:30 AM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 08/04/2022)
08/29/2022	67	ORDER (Directing Clerk to File Revised Voir Dire) - This matter comes before the Court for pretrial management. The Court hereby DIRECTS the Clerk to file as Exhibit 1 the attached revised Court's Proposed Voir Dire to the Jury Panels. Signed by District Judge David J. Novak on 8/29/2022. (Attachments: # 1 Exhibit 1) (smej,) (Entered: 08/29/2022)
08/29/2022	68	ORDER (Directing Updated Exhibits Filing) - This matter comes before the Court on the parties' Exhibit List for Phase I of the Trial and Exhibit List for Phase 2 of the Trial. The Court hereby ORDERS that Exhibit List for Phase I of the Trial and Exhibit List for Phase 2 of the Trial are filed as updated exhibits for the trial. The Court also instructs counsel that, if they have any additional exhibits, a revised exhibit list must be submitted to the Court no later than Friday, September 2, 2022. Signed by District Judge David J. Novak on 8/29/2022. (smej,) (Entered: 08/29/2022)
08/29/2022	69	ORDER Requiring Witness Testimony During Final Pretrial Conference - SEE ORDER FOR ALL DETAILS. Signed by District Judge David J. Novak on 8/29/2022. (cgar) (Entered: 08/29/2022)
09/01/2022	71	Minute Entry for proceedings held before District Judge David J. Novak:Continued Final Pretrial Conference held on 9/1/2022. Matter came on for continued final pretrial conference. Witness excused on motion of deft and court. Pltf adduced evidence. Arguments heard. Barton testimony to be admitted. Matter continued as to remaining pending motion, jury procedures and exhibits. (Court Reporter Melissa Custis, OCR.)(cgar) (Entered: 09/01/2022)
09/06/2022	72	ORDER (Directing Clerk to File Revised Jury Instructions) - This matter comes before the Court following Defendant's request to amend the jury instructions to include Virginia Model Jury Instruction 2.220. Plaintiff does not object to this request. Consequently, the Court hereby GRANTS Defendant's request and adds Virginia Model Jury Instruction 2.220 to Instruction No. 25 for the first phase and Instruction No. 10 for the second phase, as agreed by the parties. The Court further DIRECTS the Clerk to file the revised jury instructions as Attachments 1, 2 and 3 for this Order. Signed by District Judge David J. Novak on 9/6/2022. (Attachments: # 1 Attachment 1, # 2 Attachment 2,

		# 3 Attachment 3)(smej,) (Entered: 09/06/2022)
09/06/2022	73	ORDER (Releasing Juror from Jury Service) - This matter comes before the Court following a request from prospective juror Jacqueline Jackson (Juror number 8, panel 1) to be excused from jury service due to medical issues. Based on the note from Ms. Jackson's doctor, the Court hereby GRANTS the request and excuses Ms. Jackson from jury service in this case. Signed by District Judge David J. Novak on 9/6/2022. (smej,) (Entered: 09/06/2022)
09/09/2022	74	ORDER (Releasing Juror from Jury Service) - This matter comes before the Court following a request from prospective juror Breck Bland (juror number 18, panel 2) to be excused from jury service due to the jurors recent car accident and lack of transportation. Based on the note from Ms. Bland, the Court hereby GRANTS the request and excuses Ms. Bland from jury service in this case. Signed by District Judge David J. Novak on 9/9/2022. (smej,) (Entered: 09/09/2022)
09/09/2022	75	ORDER (Releasing Juror from Jury Service) - This matter comes before the Court following a request from prospective juror William Black (juror number 2, panel 1) to be excused from jury service due to his age and medical issues. Based on the note from Mr. Black, the Court hereby GRANTS the request and excuses Mr. Black from jury service in this case. Signed by District Judge David J. Novak on 9/9/2022. (smej,) (Entered: 09/09/2022)
09/12/2022	76	Minute Entry for proceedings held before District Judge David J. Novak:Jury Selection held on 9/12/2022. Jury appeared, sworn, and examined on voire dire. Selected jurors dismissed and instructed to return 9/13/2022. Day One of jury trial to start Tuesday, September 13, 2022 at 9:00 a.m. (Court Reporter Melissa Custis, OCR.)(cgar) (Entered: 09/12/2022)
09/12/2022		Jury Trial (Day 1) set for 9/13/2022 at 09:30 AM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 09/12/2022)
09/13/2022	78	Minute Entry for proceedings held before District Judge David J. Novak:Jury Trial - Day 1 held on 9/13/2022. Jury empaneled and sworn to try issues; Witnesses excluded on motion of Court; Plaintiff adduced evidence; Rested; Deft's Rule 50 motion GRANTED IN PART AND DENIED IN PART. Deft rested; Evidence concluded; Arguments of counsel heard; Jury charged by the Court as to PHASE ONE ONLY; Verdict in favor of Deft as to damaged as a result of accident not proven. Jurors dismissed and scheduled to return on Wednesday, September 14th for Phase Two -DAMAGES. Jury trial (Day 2) set for September 14, 2022 at 9:30 a.m. (Court Reporter Melissa Custis, OCR.)(cgar) (Attachment 1 -Exhibit and Witness List) . (Entered: 09/13/2022)
09/13/2022		Jury Trial - DAY 2 set for 9/14/2022 at 09:30 AM in Richmond Courtroom 6300 before District Judge David J. Novak. (cgar) (Entered: 09/13/2022)
09/13/2022	79	JURY VERDICT as to PHASE ONE (Causation ONLY). (cgar) (Entered: 09/13/2022)
09/14/2022	80	ORDER (Granting in Part and Denying in Part Defendant's Rule 50 Motion) - This matter comes before the Court on Defendant's oral motion for judgment as a matter of law under Federal Rule of Civil Procedure 50. The Court hereby GRANTS IN PART and DENIES IN PART Defendant's motion for judgment as a matter of law. The Court GRANTS Defendant's motion with regard to the issue of causation regarding Plaintiffs pelvic prolapse, due to an insufficient evidentiary basis for a reasonable jury to find for Plaintiff on that issue and as a matter of law as the causation issue relating to Plaintiff's

		pelvic prolapse was too complex for lay testimony only. The Court DENIES Defendant's motion with regard to the issue of causation regarding Plaintiffs Interstim device, of which the jury returned a verdict of not proven. Signed by District Judge David J. Novak on 9/13/2022. (smej,) (Entered: 09/14/2022)
09/14/2022	<u>81</u>	Minute Entry for proceedings held before District Judge David J. Novak:Jury Trial Day 2 held on 9/14/2022. Trial continued from 9/13/2022. Phase 2 (DAMAGES) started with opening statements; Pltf adduced evidence and rested; Deft rested; Motion as to prejudgment interest DENIED W/O PREJUDICE; Evidence concluded; Arguments of counsel heard; Jury charged by the Court; No objections and/or exceptions to the jury charge; Jury returned verdict in favor of Pltf in the amount of \$105,216.00. Post Trial filing deadlines - 30/14/6 days. (Court Reporter Melissa Custis, OCR.)(cgar) (Entered: 09/14/2022)
09/14/2022	<u>82</u>	JURY VERDICT as to PHASE TWO (Damages ONLY). (cgar) (Entered: 09/14/2022)
09/14/2022	<u>83</u>	ORDER. The Court ORDERS that a party shall have 30 days, measured from September 14, 2022, within which to file any post-verdict motions. The non-moving party shall have 14 days to file a response, and the moving party shall have 6 days to reply. Signed by District Judge David J. Novak on 9/14/2022. (jsmi,) (Entered: 09/14/2022)
09/28/2022	<u>84</u>	TRANSCRIPT of proceedings held on September 1, 2022, before Judge David J. Novak, Court Reporter Melissa Custis, Telephone number 804-916-2278. NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/28/2022. Redacted Transcript Deadline set for 11/28/2022. Release of Transcript Restriction set for 12/27/2022.(Custis, Melissa) (Entered: 09/28/2022)
09/28/2022	<u>85</u>	TRANSCRIPT of proceedings held on September 13, 2022, before Judge David J. Novak, Court Reporter Melissa Custis, Telephone number 804-916-2278. NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/28/2022. Redacted Transcript Deadline set for 11/28/2022. Release of Transcript Restriction set for 12/27/2022.(Custis, Melissa) (Entered: 09/28/2022)
09/28/2022	<u>86</u>	TRANSCRIPT of proceedings held on September 14, 2022, before Judge David J. Novak, Court Reporter Melissa Custis, Telephone number 804-916-2278. NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our

		website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/28/2022. Redacted Transcript Deadline set for 11/28/2022. Release of Transcript Restriction set for 12/27/2022.(Custis, Melissa) (Entered: 09/28/2022)
10/14/2022	87	First MOTION for New Trial, or in the alternative, to Alter Judgment by Samantha Roop. (Attachments: # 1 Exhibit Document 31 - Transcript of May 3, 2022 Hearing, # 2 Exhibit Document 56 - Transcript of July 12, 2022 Hearing, # 3 Exhibit Document 80 - Order re: Rule 50 Motion, # 4 Exhibit Document 83 - Order re: Filing of Post Judgment Motions, # 5 Exhibit Document 84 - Transcript of September 1, 2022 Hearing, # 6 Exhibit Document 85 - Transcript of Jury Trial Day 2 September 13, 2022) (Cohn, Samantha) Modified on 10/18/2022 (smej,). (Entered: 10/14/2022)
10/21/2022	88	Memorandum in Opposition re 87 First MOTION for New Trial First MOTION to Alter Judgment filed by Nicholas James Desousa. (Keeney, Carter) (Entered: 10/21/2022)
10/27/2022	89	Declaration <i>Proffer of Excluded Evidence</i> by Samantha Roop. (Cohn, Samantha) (Entered: 10/27/2022)
10/27/2022	90	REPLY to Response to Motion re 87 First MOTION for New Trial First MOTION to Alter Judgment <i>Plaintiff's Reply to Defendant's Motion in Opposition</i> filed by Samantha Roop. (Cohn, Samantha) (Entered: 10/27/2022)
03/09/2023	91	MEMORANDUM OPINION. Signed by District Judge David J. Novak on 3/9/2023. (smej,) (Entered: 03/09/2023)
03/09/2023	92	ORDER (Denying Motion for New Trial or to Alter or Amend Judgment) - This matter comes before the Court on Plaintiff's Motion for New Trial under Fed. R. Civ. P. 59(a) or, in the alternative, to Alter or Amend the District Court's Judgment under Fed. R.Civ. P. 59(c) ("Motion" (ECF No. 87)), moving the Court to grant a new trial, or in the alternative, amend or alter a judgment against her under Rules 59(a) and (e), respectively. For the reasons stated in the accompanying Memorandum Opinion, and pursuant to Federal Rules of Civil Procedure 59(a) and (e), the Court hereby DENIES Plaintiff's Motion (ECF No. 87). Signed by District Judge David J. Novak on 3/9/2023. (smej,) (Entered: 03/09/2023)
03/10/2023	93	CLERK'S JUDGMENT entered on 3/10/2023. (cgar) (Entered: 03/10/2023)
04/05/2023	94	NOTICE OF APPEAL as to 80 Order,,, by Samantha Roop. Filing fee \$ 505, receipt number VAEDC-8875710. (Cohn, Samantha) (Main Document 94 replaced on 4/6/2023) (smej,). (Entered: 04/05/2023)
04/06/2023	95	Transmission of Notice of Appeal to US Court of Appeals re 94 Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (smej,) (Entered: 04/06/2023)
04/07/2023		USCA Case Number 23-1376, Case Manager J. Neal, for 94 Notice of Appeal filed by Samantha Roop. (smej,) (Entered: 04/07/2023)

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IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

NOTICE OF REMOVAL

COMES NOW Defendant Nicholas James Desousa, by counsel, pursuant to 28 U.S.C. §1332 and 1441 et. seq. and state for his grounds for removal as follows:

1. Plaintiff in this matter, Samantha Roop, was at all times relevant to this cause of action and at the time of filing and any attempted service a citizen of the Commonwealth of Virginia. Plaintiff Roop is currently a citizen of the Commonwealth of Virginia.

2. Defendant Nicholas James Desousa was at all times relevant to this cause of action and at the time of filing and any attempted service was a Citizen of the State of Maryland and resided in Chesapeake Beach, Calvert County Maryland. Defendant is not a citizen of the Commonwealth of Virginia for the purposes of diversity jurisdiction.

3. This lawsuit was filed in the Circuit Court of the City of Richmond on June 3, 2021. Defendants time for filing responsive pleadings has not expired as the Affidavit of Service has not been filed with the Clerk of Court for the City of Richmond. Defendant has had notice of this lawsuit for less than thirty days.

4. The amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, Plaintiff's *ad damnum* being the sum of Five Million Dollars and Zero Cents (\$5,000, 000.00), plus costs and pre- and post-judgment interest.

5. This Court has jurisdiction over this action by reason of the amount in controversy and diversity of the parties under 28 U.S.C. §§1332, 1441 and 1446.

6. Venue is proper in the Eastern District of Virginia, Richmond Division, as this matter arises out of an automobile accident that occurred in Middlesex County, Virginia and the Plaintiff filed the lawsuit in the Circuit Court for the City of Richmond.

7. Plaintiff's original Complaint filed in the Circuit Court of the City of Richmond is attached hereto as Exhibit 1.

8. The Civil Cover Sheet is attached hereto as Exhibit 2.

9. Defendant is diverse from Plaintiff.

10. Defendant consents to the removal of this action.

WHEREFORE, Defendant Nicholas James Desousa, by counsel, respectfully request that this Court accept jurisdiction of this cause of action from the Circuit Court of the City of Richmond, Virginia.

NICHOLAS JAMES DESOUSA,
By Counsel

/s/ _____, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeenev@carterandshands.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 26th day of October, 2021, I will email the foregoing to counsel listed below and I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Theodore Briscoe, III, Esquire (VSB# 86040)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Telephone: (804) 888-8888
Facsimile: (804) 355-9988
tbriscoe@mcdonaldinjurylaw.com
Counsel for Plaintiff

_____/s/_____, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeene@carterandshands.com
Counsel for Defendant

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

SAMANTHA ROOP,

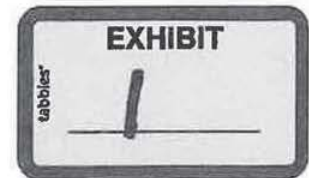
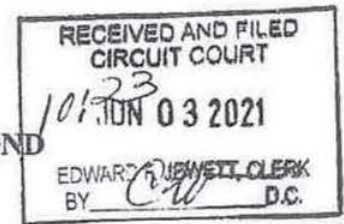
Plaintiff,

v.

Case No. CL21-2397-2

NICHOLAS JAMES DESOUSA,

**Serve: c/o Office of the Secretary of the Commonwealth, Registered Agent
Service of Process Department
Post Office Box 2452
Richmond, VA 23218**



COMPLAINT

COMES NOW the Plaintiff, Samantha Roop, by counsel, and for her Complaint seeking judgment against the Defendant Nicholas J. DeSouza, and states as follows:

1. Plaintiff, Samantha Roop (hereinafter "Ms. Roop" or "Plaintiff"), is an adult individual and, for all times relevant to this action, a resident and domiciliary of the County of Powhatan, Virginia.

2. Upon information and belief, Defendant, Brad L. DeSouza, (hereinafter "Mr. DeSouza" or "Defendant") is an adult individual and, for all times relevant to this action, a resident and domiciliary of the state of Maryland, with a last known address of 3113 Blue Heron Drive S, Chesapeake Beach, MD 20732. By operation of law, his statutory registered agent is the Secretary of the Commonwealth of Virginia, in the City of Richmond.

VENUE

3. Because the defendant has been appointed, by operation of the law, a service agent located in the city of Richmond, Virginia, venue is proper in this Court, pursuant to Code of Virginia §8.01-262(2).

FACTS

4. At approximately 8:45 pm on July 7, 2019, Ms. Roop was operating a vehicle traveling westbound on Route 17 Business, at or about its intersection with Route 17, in Middlesex Virginia.

5. At that same time and place, Defendant was operating a motor vehicle travelling northbound on Route 17 near its intersection with Route 17 Business, in Middlesex Virginia.

6. Defendant was operating his vehicle without headlights engaged.

7. At the same time and place, the Sun had already set, and the roadway was not illuminated by any source.

8. Ms. Roop attempted to cross Route 17 to continue westbound on Route 17 Business.

9. Ms. Roop was unable to see Defendant's approaching vehicle.

10. Suddenly, and without warning, Defendant struck Ms. Roop's vehicle.

11. As a result of Defendant's actions, Ms. Roop was injured.

12. At the time and place aforesaid, Defendant had a duty to pay full time and attention while driving, to keep a proper lookout, to keep his vehicle under proper control, and to operate the vehicle in a safe manner under the conditions then and there prevailing, and to utilize the headlights of his vehicle, but failed to do so.

13. Defendant was negligent in that he, to include but not be limited to:

- a. Failed to keep a proper lookout;
- b. Failed to give full time and attention to the operation of his vehicle;

- c. Failed to maintain his vehicle under proper control;
- d. Failed to operate his vehicle in a safe manner;
- e. Failed to engage his vehicle's headlights; and
- f. Caused a collision between the two vehicles.

12. As a direct and proximate result thereof, Ms. Roop has sustained serious and permanent injuries, has suffered inconvenience, has suffered and will continue to suffer great pain of body and mind; has sustained physical limitations, loss of enjoyment of life, mental anguish, scarring and emotional injury; and has incurred and will continue to incur in the future hospital, doctor, and related bills in an effort to be cured of said injuries.

WHEREFORE, the Plaintiff, Samantha Roop, respectfully prays for judgment against the defendant, Nicholas J. DeSouza in the sum of Five-Million Dollars (\$5,000,000.00) and interest from the date of this crash, pursuant to Virginia Code §8.01-382, and all other costs this Honorable Court deems fair and just.

TRIAL BY JURY IS DEMANDED.

SAMANTHA ROOP

By _____
Of Counsel

Theodore W. Briscoe III (VSB No. 86040)
Kyle J. Matykowski (VSB No. 82397)
Geoff McDonald & Associates, P.C.
8720 Stony Point Pky, Ste. 250
Richmond, Virginia 23235
804.888.8888 Phone
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tbriscoe@mcdonaldinjurylaw.com
kmatykowski@mcdonaldinjurylaw.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Roon, Smantha

(b) County of Residence of First Listed Plaintiff Powhatan, VA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Desousa, Nicholas J.

County of Residence of First Listed Defendant Calvert Co., MD.

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities' Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332 and 1441

Brief description of cause:

MVA: Plaintiff alleges she was injured as a result of Defendant's negligence.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/26/2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.:
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

Attachment to Civil Cover Sheet

Theodore Briscoe, III, Esquire (VSB# 86040)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Telephone: (804) 888-8888
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tbriscoe@mcdonaldinjurylaw.com
Counsel for Plaintiff

Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeenev@carterandshands.com
Counsel for Defendant

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

ANSWER

COMES NOW Defendant Nicholas James Desousa, by counsel, and for his Answer to Plaintiff's Complaint filed herein against him, state as follows:

1. Defendant admits the allegations in Paragraphs Number 1 and 2 of Plaintiff's Complaint.
2. Defendant denies the allegations contained in Paragraphs Number 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13a, 13b, 13c, 13d, 13e, 13f, second Paragraph 12, and the last unnumbered Paragraph of Plaintiff's Complaint, and calls for strict proof thereof.
3. Defendant admits he was involved in an automobile accident on July 7, 2019.
4. Defendant admits that he is an adult individual who resides at 3113 Blue Heron Drive South, Chesapeake Beach, Maryland. However, Defendant asserts he resides in the County of Calvert County, Maryland.
5. Defendant state that Plaintiff's claim may be barred by her contributory negligence and reserves the right to amend this Answer to reflect any other defense that may arise hereinafter.
6. Defendant states that Plaintiff was not injured in the manner, nor to the extent, alleged.
7. Defendant states that he owes Plaintiff no sum whatsoever.

WHEREFORE, Defendant Nicholas James Desousa, by counsel, asks that this Court dismiss the Complaint filed herein against him and enter an Order in his favor with his costs and attorney's fees herein expended.

TRIAL BY JURY IS DEMANDED

NICHOLAS JAMES DESOUSA,
By Counsel

/s/, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeeney@carterandshands.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 26th day of October, 2021, I will send via email the foregoing to counsel listed below and I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Theodore Briscoe, III, Esquire (VSB# 86040)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Telephone: (804) 888-8888
Facsimile: (804) 355-9988
tbriscoe@mcdonaldinjurylaw.com
Counsel for Plaintiff

/s/, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeeney@carterandshands.com
Counsel for Defendant

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,

Plaintiff,

v.

Civil Action No.: 3:21-cv-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

PLAINTIFF'S INITIAL RULE 26(a)(1)(A) DISCLOSURES

Plaintiff, Samantha Roop, by counsel, hereby makes the following initial disclosures in accordance with Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure:

1. Individuals who are likely to have discoverable information:

- a. The Defendant, Nicholas James Desousa. Upon information and belief, the Defendant resides at 3113 Blue Herron Drive S, Chesapeake Beach, Maryland 20732.
- b. Samantha Roop, plaintiff, may be contacted through counsel. Ms. Roop has knowledge of the incident, her pre-incident life, and her post-incident life and difficulties. Plaintiff resides at 2291 Mill Road, Powhatan, Virginia 23139.
- c. Gerard Barton, Plaintiff's husband. Mr. Barton has knowledge of Plaintiff's pre-incident life and her post-incident life and difficulties. He is aware of the incident through the Plaintiff and their children who were passengers in the vehicle at the time of the incident. Mr. Barton resides at 2291 Mill Road, Powhatan, Virginia 23139.

d. Kelsey Hendershot, minor, was a passenger in Plaintiff's vehicle at the time of the incident and has knowledge of the incident and Plaintiff's post-incident life and difficulties. Miss Hendershot resides at 2291 Mill Road, Powhatan, Virginia 23139.

e. Kendra Barton, minor, was a passenger in Plaintiff's vehicle at the time of the incident and has knowledge of the incident and Plaintiff's post-incident life and difficulties. Miss Barton resides at 2291 Mill Road, Powhatan, Virginia 23139.

f. John Barton, minor, was a passenger in Plaintiff's vehicle at the time of the incident and has knowledge of the incident and Plaintiff's post-incident life and difficulties. Mr. Barton resides at 2291 Mill Road, Powhatan, Virginia 23139.

g. Jim Miller, a witness to the incident. Mr. Miller has knowledge of the incident.

h. Trooper Adam N. Cavins. Trooper Cavins investigated the incident and has knowledge thereof. Trooper Cavins also prepared the crash report associated with the incident.

i. Plaintiff's family, friends, and co-workers, to be specifically identified in discovery, who may have knowledge of Plaintiff's pre-incident life and post-incident life and difficulties.

j. Plaintiff's treating physicians, healthcare professionals, and employees of healthcare facilities, specifically:

i. St. Francis Watkins Center

ii. Richmond Emergency Physicians

- iii. Emergency Coverage Corporation
 - iv. Commonwealth Radiology
 - v. Powhatan Medical Associates
 - vi. Chippenham & Johnston Willis Hospital
 - vii. Alliance Physical Therapy
 - viii. Intimate Wellness Institute of Virginia
 - ix. Bon Secours Neurology Clinic
 - x. Tuckahoe Orthopedics
 - xi. OrthoVirginia
- k. Plaintiff's prior treating physicians, healthcare professionals, and employees of healthcare facilities who have knowledge of Plaintiff's pre-incident state of health, specifically:
- i. All previous disclosed medical providers in section 1(j) above.
 - l. Any other individual identified in Defendant's Rule 26(a)(1) Disclosure.

2. Documents and things:

- a. The following categories of documents are in the possession of plaintiff and may be used to support plaintiff's claim:
 - i. Crash Report prepared by Trooper Cavins, attached hereto.
 - ii. Field notes taken by Trooper Cavins, attached hereto.
 - iii. Statements from Plaintiff and Defendant taken as part of Trooper Cavins' investigation, attached hereto.

iv. Video recording containing in-car video of the incident scene, attached hereto.

v. Audio recordings received from Plaintiff's FOIA request, attached hereto.

vi. Photographs of the vehicles involved in the incident, attached hereto.

vii. Plaintiff's pre- and post-incident medical bills and records currently in Plaintiff's possession and as may be otherwise obtained during discovery.

viii. Any document identified in Defendant's Rule 26 Disclosures

b. The following categories of documents are being withheld from production at this time on the grounds of attorney-client privilege and/or subject to protective order and/or work product and/or settlement negotiation privilege: communications between plaintiff and her attorneys and research (legal and/or factual) by, or directed by, such attorneys.

3. Computation of Damages Claimed by Plaintiff:

- a. Past pain
- b. Past suffering.
- c. Current and future pain
- d. Current and future suffering.
- e. Past inconvenience.
- f. Current and future inconvenience.
- g. Past emotional distress.
- h. Current and future emotional distress.

- i. Pre-judgment and post-judgment interest.
- j. The total amount of damages are estimated at \$5,000,000.00, plus reasonable attorneys fees and costs, pre-judgment interest and post-judgment interest, to be computed at the close of litigation.

4. Insurance agreements:

- a. Plaintiff has none applicable to this action.

Respectfully submitted,
SAMANTHA ROOP
Plaintiff

/s/ _____ Nikita Wolf, Esq. _____

Nikita Wolf (VSB No. 86939)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Phone: (804) 888-8888
Facsimile: (804) 359-5426
Email: nwolf@mcdonaldinjurylaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2021, the foregoing Rule 26(a)(1) disclosures was electronically mailed to the following:

Carter T. Keeney, Esq. (VSB # 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Phone: (804) 747-7470
Facsimile: (804) 747-7977

Email: ckeeney@carterandshands.com
Counsel for Defendant

/s/ Nikita Wolf, Esq.
Nikita Wolf, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil No. 3:21cv675 (DJN)

NICHOLAS DESOUSA,
Defendant.

SCHEDULING AND PRETRIAL ORDER

The following shall govern the progress of this action in addition to the provisions of the Federal Rules of Civil Procedure as modified and/or enlarged upon by the Local Rules for this Court. This Order shall control if any conflict is perceived between it and either the Federal or Local Rules. The term “Rule(s)” refers to the Federal Rules of Civil Procedure and “Local Rule(s)” refers to the Local Rules for this District. This Order supersedes any previous scheduling order(s).

Trial Date

1. Trial is scheduled with a jury to commence at 9:30 a.m. with jury selection only on **July 21, 2022** and to continue with opening statements and testimony beginning on **July 22, 2022**, and concluding that day.

Answer and Joinder

2(a). Any defendant that has not filed an Answer shall do so within eleven (11) calendar days from the date of this Order without prejudice to any motions already filed by the defendant.

2(b). Any motions for joinder of additional parties shall be filed within fifteen (15) calendar days after entry of this Order.

Motions Challenging Pleadings and Leave to Amend

3(a). If a party has filed or hereafter files a motion to dismiss a pleading pursuant to Rules 12(b)(1)-(3) or 12(b)(6), a motion for judgment on the pleadings pursuant to Rule 12(h)(2)(B), a motion for a more definite statement pursuant to Rule 12(e), or a motion to strike pursuant to Rule 12(f), consistent with Rule 15(a)(1), the party/parties whose pleading is challenged by the motion shall have twenty-one (21) days from service of the motion or seven (7) days from the issuance of this Order, whichever is later, in which to file an amended pleading.

3(b). If the nonmovant(s) files an amended pleading within the period prescribed in Paragraph 3(a), the Court shall as a matter of course deny the motion challenging the original pleading with leave to refile the motion based on the amended pleading. The party/parties whose pleading is challenged by the refiled motion shall not have leave to file a second or subsequent amended pleading without filing a separate motion for leave to amend, which shall be granted only upon satisfaction of Rule 16(b)(4) and Rule 15. *See Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir. 2008) (requiring parties moving for leave to amend outside of the deadlines prescribed in a scheduling order to satisfy the good cause requirement of Rule 16(b)(4) and the requirements of Rule 15).

3(c). If the nonmovant(s) does not file an amended pleading within the period prescribed in Paragraph 3(a), the Court will resolve the relevant motion based on the original pleading, with leave to amend the original pleading granted only upon satisfaction of the requirements of Rule 16(b)(4) and Rule 15.

Rule 26 Disclosures

4(a). Not later than **February 21, 2022**, each party shall identify all persons it expects to call as expert witnesses in its case-in-chief at trial in support of any complaint, counterclaim, cross-claim, or third-party complaint, and shall serve all other parties with a copy of a written report complying with the requirements of Rule 26(a)(2)(B) and (C) for each such expert witness. Rule 26(a)(2)(B) shall not be deemed to include the opinion(s) of treating professionals and the terms of this Order shall supersede any conflicting provisions of Rule 26.

4(b). Not later than **March 23, 2022**, each defending party shall identify all persons it expects to call as expert witnesses in opposition to any complaint, counterclaim, cross-claim, or third-party complaint, and shall serve all other parties with a copy of a written report complying with the requirements of Rule 26(a)(2)(B) and (C) for each such expert witness.

4(c). Not later than **April 4, 2022**, each party shall identify all persons expected to be called as expert witnesses solely to contradict or rebut any witness identified pursuant to Paragraph 4(b) and shall serve all other parties with a copy of a written report complying with the requirement of Rules 26(a)(2)(B) and (C) for each such expert witness.

4(d). The parties may rely upon the testimony of only one expert per topic, except by order of the Court.

4(e). Any motions challenging expert testimony based upon *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny shall be filed not later than **April 12, 2022**. Any response to such a motion shall be filed not later than ten (10) calendar days after the filing of the motion and any reply shall be filed not later than three (3) calendar days thereafter.

Completion of Discovery

5(a). All discovery, including the required time period for response to any discovery demand(s), must be concluded not later than **March 23, 2022**, except by order of the Court.

5(b). Counsel are expected to resolve discovery disputes without filing motions or involving the Court. Should a dispute arise, consistent with Local Rule 37(E), counsel must confer in good faith to resolve the dispute. “Good faith” means that the parties have met in person and engaged in one-on-one discussions, not that the parties have merely exchanged correspondence. If, after good faith effort, counsel are unable to resolve a dispute and need the Court to intervene, the parties shall file a joint motion not exceeding twenty (20) pages in length setting forth (1) the posture of the case, (2) the nature of the discovery dispute, (3) the efforts made by the parties to resolve the dispute, (4) the position of each party regarding the dispute, (5) whether a hearing is necessary to address the issue, and (6) a certification under Local Rule 37(E) signed by counsel for each party that they have met in person and conferred in good faith to resolve the dispute before involving the Court. The Court strongly prefers that the parties file a joint motion, so that the dispute can be addressed in an expedited manner. In extraordinary situations where the parties believe that a joint pleading is not feasible, the parties must file a motion for leave to file separate submissions, setting forth the reasons that a joint submission cannot suffice. The parties must file any motions with sufficient time for the Court to resolve the dispute before the completion of discovery, because the Court will not extend the discovery deadline due to a dispute except in extraordinary circumstances. Counsel are reminded that discovery disputes requiring judicial intervention are strongly disfavored and that the Court will impose sanctions pursuant to Rule 37 and Local Rule 37 against any party not acting in good

faith to resolve a dispute before involving the Court. *See Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (recognizing a trial court's inherent authority to control the litigation of a case and impose sanctions for abuse of the judicial process); *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 642-43 (1976) (affirming the power of district courts to, in their discretion, issue Rule 37 sanctions).

5(c). No discovery materials shall be filed with the Clerk except by order of the Court.

5(d). If a party objects to the production of documents on the grounds of attorney-client privilege, attorney work-product doctrine, or any other protection, the objecting party must provide the requesting party with an inventory list of the documents to which objection is made (i.e., a privilege log), together with a brief description of the document, including the date, the author, identity of each recipient including their job titles at the pertinent time, and the claimed basis for its protection, all of which shall be sufficient to permit the opposing party to assess the claim of privilege or protection. Unless otherwise ordered by the Court, the claim of privilege or protection shall be waived unless the privilege log is served with the responses to the request for production in the time required by the Federal Rules, the Local Rules or by a deadline established by an order of the Court.

5(e). If any party anticipates difficulty meeting the deadline for asserting discovery objections or serving the opposing party with a privilege log, the Court instructs the party to move for an extension of time at the earliest reasonable opportunity, preferably before objections or privilege logs become due. Such motion will be granted for good cause shown. If any party is shown to have unnecessarily delayed in seeking such an extension of time, the Court will strictly enforce the deadlines established by the Local Rules.

5(f). No party shall take more than five (5) depositions of non-party witnesses without leave of Court. For purposes of this paragraph, a deposition of a non-party entity under Rule 30(b)(6) shall count as one deposition, even if the entity designates multiple witnesses to testify.

5(g). Counsel shall serve all discovery requests by e-mail and hardcopy, unless the parties otherwise agree in writing. *Pro se* litigants are not required to serve discovery requests by e-mail, and represented parties are not required to serve *pro se* litigants by e-mail.

Dispositive Motions

6. All dispositive motions shall be filed not later than **April 12, 2022**. This deadline shall not change, except by order of the Court. Counsel must submit two (2) courtesy copies of all motions and one (1) copy of all exhibits to Chambers. Counsel are reminded of the requirements of Local Rule 56(B), which are specifically incorporated herein regarding motions for summary judgment.

Non-Dispositive Motions

7. All non-dispositive motions, including all motions *in limine* (excluding *Daubert* motions, *see* ¶ 4(e) *supra*) shall be filed not later than **June 21, 2022**. The brief in opposition to such non-dispositive motions shall be filed not later than six (6) days after the motion is filed. The reply brief in support of such non-dispositive motions, if any, shall be filed not later than three (3) days after the opposition is filed.

Oral Argument

8(a). Consistent with Local Rule 7(J), the Court will decide all motions on the papers unless the Court orders oral argument on its own initiative or on separate motion filed by the

parties. The separate motion must include an incorporated brief explaining why oral argument will materially aid in the decisional process.

8(b). The Court will not enforce the provisions of Local Rule 7(E) to the extent that it requires a movant to schedule a hearing within thirty (30) days after filing a motion.

Proposed Witnesses

9. Each plaintiff shall file a list of proposed witnesses not later than **June 13, 2022**, and each defendant shall designate its witnesses not later than **June 21, 2022**. Plaintiff(s) shall file a list of any rebuttal witnesses not later than six (6) days after defendant designates its witnesses. Failure to comply with the provisions of this paragraph shall result in preclusion of a witness's testimony at trial, absent exceptional circumstances.

Discovery To Be Used As Evidence

10. Each plaintiff shall file a designation not later than **June 13, 2022** specifically identifying any discovery material that is intended to be offered into evidence and each defendant shall do likewise not later than **June 21, 2022**. Any designation must identify the specific item of discovery intended to be offered into evidence by exhibit number, title of the document and the specific page and sentence of the relevant information, along with a statement of relevance and basis for admission. For nonjury trials, pursuant to Local Rule 30(G), counsel shall provide summaries of any deposition testimony, pointing to the salient points to be noted by the Court. Any objection to the introduction of any discovery material shall be filed not later than **June 27, 2022** or the objection will be deemed waived. This paragraph does not apply to discovery materials that will be used at trial solely for cross-examination and/or for impeachment purposes.

Jury Trial

11(a). If this matter is to be tried by a jury, counsel for all parties shall jointly file electronically any requested jury instructions, including all requested standard instructions, not later than **June 30, 2022**. The submission of proposed jury instructions shall include each requested jury instruction (regardless whether agreed or objected to) fully set forth on a separate page with a citation in support of the instruction set forth at the bottom of the requested instruction. The submission shall be organized as follows. First, the parties shall tender the agreed set of instructions (to be labeled “J-1,” “J-2,” etc.), including any special interrogatory verdict form. Second, the parties shall tender any of Plaintiff’s proposed instructions (to be labeled “P-1,” “P-2,” etc.) to which Defendant objects. Third, the parties shall tender any of Defendant’s proposed instructions (to be labeled “D-1,” “D-2,” etc.) to which Plaintiff objects. Counsel shall also provide a copy of the requested jury instructions in Microsoft Word format via e-mail to Chambers.

11(b). Not less than three (3) calendar days after the filing of the requested jury instructions, the objecting party shall submit its memorandum in opposition to any jury instructions requested by the other side that are not agreed upon. The objecting party shall set forth the nature of the dispute, any authority on the issue and any alternative instruction.

11(c). Not less than five (5) calendar days after the filing of the requested jury instructions, the party proposing any requested instructions that are not agreed upon may submit a memorandum in support of the requested instructions.

Voir Dire

12. Any proposed jury *voir dire* to be requested by any party shall be filed not later than **June 30, 2022**. Parties are encouraged to submit an instruction that succinctly summarizes the position of each party for use by the Court during *voir dire*.

Bench Trial

13. If this matter is to be tried without a jury, the parties shall file proposed findings of fact and conclusions of law not later than **July 7, 2022**. Counsel shall also provide a copy of the proposed findings of fact and conclusions of law in Microsoft Word format via e-mail to Chambers.

Written Stipulations

14. Not later than **June 27, 2022**, counsel for each party shall meet and confer in a good faith effort to enter into written stipulations of uncontroverted facts. Written stipulations shall be signed by each counsel and filed with the Clerk not later than **June 30, 2022**.

Proposed Exhibits

15(a). Each plaintiff shall file a list of proposed exhibits not later than **June 13, 2022** and shall provide a copy of all proposed exhibits to all parties. Each defendant shall file a list of proposed exhibits and shall provide a copy of same to every party not later than **June 21, 2022**. Any objection to any exhibit shall be noted by a motion that includes the subject exhibit(s) filed not later than six (6) days following defendant's filing of proposed exhibits.

15(b). In anticipation of trial, each party shall ensure that three (3) sets of pre-marked, indexed copies of that party's exhibits are submitted in binders to the Clerk at least one day

before trial begins for use by the courtroom deputy clerk during trial proceedings and the jury during its deliberations.

Deadlines

16. Unless otherwise specified, any deadline established herein shall be governed by Rule 6. For purposes of Rule 6(d), all electronically filed documents shall be deemed electronically served regardless of additional service by any other means.

Settlement

17(a). This case is hereby REFERRED to United States Magistrate Judge **Elizabeth W. Hanes** for settlement. The parties shall be responsible for contacting the chambers of the Magistrate Judge to schedule the settlement conference. If amenable to the Magistrate Judge and otherwise consistent with their calendar, the Court orders the parties to schedule the settlement conference before **April 1, 2022**. The parties may elect to utilize a mediator for settlement purposes; however, if they elect to do so, the parties must still schedule a settlement conference with the Magistrate Judge before the deadline and then meet with the private mediator before the scheduled settlement conference with the Magistrate Judge.

17(b). The parties shall file notice of any settlement, either in whole or in part, as soon as practicable but not later than 12:00 p.m. on the nearest business day following the date of settlement. Counsel shall submit a stipulation of dismissal not later than fourteen (14) calendar days after filing the notice of settlement, unless otherwise ordered by the Court. If such stipulation is not timely filed, the Court will dismiss this action with prejudice as to all parties involved in the settlement.

Final Pretrial Conference

18. A Final Pretrial Conference will be held on **July 1, 2022 at 10:00 a.m.** Not later than seven (7) days before the Final Pretrial Conference, the parties shall jointly submit a proposed Final Pretrial Order to the Court, endorsed by counsel and setting forth all resolved and disputed matters related to trial evidentiary issues. The proposed Final Pretrial Order shall be broken down by the following sections: (1) Stipulated Facts; (2) Legal and Evidentiary Stipulations (including jurisdiction and venue); (3) List of Proposed Witnesses by Each Party; (4) Exhibits (including identification of those exhibits to which there is no objection); (5) Factual Contentions as set forth by each party; and (6) Triable Issues as set forth by each party.

Pretrial Briefs

19. The parties may file pretrial bench briefs on material issues expected to arise at trial; indeed, the Court encourages such practice. Pretrial briefs, however, may not serve as a substitute for motions *in limine*, because pretrial briefs do not seek a remedy. Instead, pretrial briefs serve as a vehicle for counsel to educate the Court about a potential trial issue. If counsel elects to file a pretrial brief, it must be filed not later than **July 15, 2022**.

Courtroom Technology

20(a). All exhibits will be presented by available electronic means during trial. The courtroom is equipped with a document viewer that displays evidence on monitors located on counsel tables, on the bench and in the jury box. The parties may also use personal laptop computers to aid in the presentation of evidence. The Court does not provide laptops. The Court advises the parties to visit the following webpage for more information on the Court's

technological capabilities: http://www.vaed.uscourts.gov/resources/Court%20Technology/evidence_presentation_systems.htm.

20(b). Any party wishing to use courtroom technology during a proceeding should submit a Request to Use the Court's Evidence Presentation System form and confer with the undersigned's courtroom deputy at least ten (10) days before the proceeding. The Court expects all parties using courtroom technology to conduct a test run before any proceeding.

20(c). Any party wishing to bring personal electronic devices, including laptops and cell phones, to a proceeding should submit a Request for Authorization form to the undersigned's law clerks at least three (3) days before the proceeding. While in the courthouse, all devices should be turned off (not in silent or vibrate modes) unless in use for court-related matters.

Attorneys' Fees


21. Any motion for an award of attorneys' fees will be addressed after trial pursuant to Rule 54 and Local Rule 54 (if fees are treated as costs by statute or rule). Such motions shall be governed by applicable statutory and decisional law and must be accompanied by a brief. A party moving for attorneys' fees must submit an affidavit or declaration itemizing time spent on the case, describing the work done and the hourly rate of the person billing the case. In addition, a movant must submit an affidavit or declaration from an expert establishing the reasonableness of the fees.

Communications with Chambers

22. *Ex parte* communications with chambers are strongly discouraged and should be limited to scheduling questions and other clerical matters. All other requests and communications should be made via filings on the public docket.

The Clerk is DIRECTED to provide a copy of this Order to all counsel of record and any party not represented by counsel.

It is so ORDERED.


_____/s/_____
David J. Novak
United States District Judge

Richmond, Virginia
Date: December 15, 2021

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,

Plaintiff,

v.

Civil Action No.: 3:21-cv-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

PLAINTIFF'S EXPERT DESIGNATIONS

COMES NOW, the Plaintiff, Samantha Roop, by and through counsel, and for her Expert Witness Designations, respectfully states that she may call the following witnesses at the trial of this matter:

**Teresa Camden, M.D.
New Medical Spa
2235 Old Brick Road
Short Pump, VA 23060
Phone: (804) 376-8008**

Dr. Camden is a medical physician specializing in Family Medicine, Sports Medicine, and Cosmetic Medicine and is one of Plaintiff's treating healthcare providers. This designation will be supplemented with Dr. Camden's *curriculum vitae*.

Dr. Camden is expected to testify that on July 8, 2019, Plaintiff, Samantha Roop, then a 34-year old female, was in a motor vehicle crash (the "Crash") in which Plaintiff was a driver. Plaintiff's vehicle was struck by another vehicle in a t-bone fashion, and that Plaintiff sustained

significant injuries as a result of said incident. Dr. Camden is expected to testify that Plaintiff suffered from an injury to her head, neck, left shoulder, and also multiple contusions, and these injuries were all due to the Crash. Dr. Camden is expected to testify that upon examination by Richard Gill, M.D. at St. Francis Medical Center, Plaintiff presented with, among other things, the aforementioned injuries, and underwent CT scans and x-rays of her left hip, left shoulder, and cervical spine.

Dr. Camden is further expected to testify that upon later examination, on July 10, 2019, Plaintiff presented to Powhatan Medical Associates presenting with headaches, nausea, light sensitivity, tenderness to the left side of her body, back pain, and diffuse joint pain, and these injuries were all due to the Crash. Dr. Camden is expected to testify that Plaintiff was examined by Madeline Klim, NP, diagnosed with nausea and a concussion due to the Crash, was given prescriptions, and referred to a follow-up evaluation with a neurologist and to return to her PCP as needed for continued or worsening symptoms.

Dr. Camden is expected to testify that on July 15, 2019, Plaintiff presented to CJW Medical Center – Johnston-Willis Campus with complaints of head pain, back pain, and neck pain. Dr. Camden is expected to testify that a physical examination and review of symptoms was performed by Karen Gardella, NP, and John Bantle, M.D., and revealed positive signs of photophobia, nausea, vomiting, neck pain, back pain, headache, dizziness, tenderness of the neck and low back, and that a check of the Plaintiff's range of motion was unable to be completed due to reported pain in the low back. Dr. Camden is expected to testify that these injuries were all due to the Crash. Dr. Camden is expected to testify that as a result of the aforementioned injuries, CT scans were taken of Plaintiff's cervical spine, thoracic spine, and head which came back as normal. Dr. Camden is further expected

to testify that Plaintiff was given pain medications while at the ER and that her symptoms were later re-checked after the administration of these medications; as a result, Plaintiff's pain and range of motion were mildly improved. Dr. Camden will testify that Plaintiff was discharged with prescriptions for Fioricet and muscle relaxers and advised to follow up with her pain specialist for further evaluation regarding her new injuries. Dr. Camden is expected to testify that Plaintiff was diagnosed with back pain, concussion, headache, and neck muscle spasms due to the Crash

Dr. Camden is expected to testify that on July 19, 2019, Plaintiff presented to Alliance Physical Therapy for the first of several visits. Dr. Camden is expected to testify that on the July 19, 2019 visit, Plaintiff presented with complaints of headache, pain in left hip, low back pain/stiffness, neck and shoulder pain, and decreased sleep. Dr. Camden is expected to testify that upon physical examination, Plaintiff showed positive signs of decreased range of motion in neck and back, decreased strength and flexibility, increased headaches, poor vestibulo-ocular reflex and gaze-stab tolerance. Dr. Camden is expected to testify that Plaintiff was diagnosed with cervicgia, pain in left shoulder, pain in left arm, headaches, concussion, generalized muscle weakness, strain of muscle, fascia, and tendon at neck level, sprain of ligaments of cervical spine, pain in left hip, and low back pain. Dr. Camden is expected to testify that these injuries were all due to the Crash. Dr. Camden is expected to testify that the plan of care developed at this time was for Plaintiff to be seen at the physical therapy office 2-3 times per week for 4-6 weeks.

Dr. Camden is further expected to testify that Plaintiff underwent the recommended course of physical therapy treatment and completed her physical therapy regimen on October 16, 2019. Dr. Camden is expected to testify regarding the therapies and modalities performed on Plaintiff during her treatment period at Alliance Physical Therapy as well as their effect and duration on Plaintiff's

overall health. Dr. Camden is expected to testify in accordance with the contents of the documentation concerning each of Plaintiff's individual physical therapy appointments which were created close in time and/or contemporaneously with Plaintiff's physical therapy visits and in accordance with the regular business practice of Alliance Physical Therapy.

Dr. Camden is expected to testify that upon his review of Plaintiff's medical records and Dr. Camden's examination of Plaintiff that all of the above-referenced diagnoses and pain stem from the vehicle collision which occurred on July 7, 2019. Dr. Camden is further expected to testify that Plaintiff sustained all of the above-listed injuries due to the vehicle collision which occurred on July 7, 2019.

Dr. Camden is expected to testify that it is not unusual for the pain and physical issues listed above to present themselves due to the Crash.

Dr. Camden is expected to testify that the above-referenced medical evaluation and treatment Plaintiff received was reasonable, necessary, and causally related to the Crash, and that the bills for such services were reasonable.

Dr. Camden is expected to testify that the physical therapy Plaintiff received was reasonable, necessary, and causally related to the Crash, and that the bills for such services were reasonable.

She is also expected to testify that the medications prescribed to Plaintiff were reasonable and necessary, and that the need for the medication was causally related to the Crash.

Dr. Camden's testimony will be based upon her personal examinations of Samantha Roop as well as the records of Ms. Roop's treatment at Saint Francis Medical Center, Bon Secours Powhatan Medical Associates, Chippenham Johnston Willis Hospital, and Alliance Physical Therapy, and by Dr. Richard Gill, Dr. John Bantle, Madeline Klim, NP, Karen Gardella, NP,

All of the opinions that Dr. Camden will provide are expected to be to a reasonable degree of medical probability.

SAMANTHA ROOP,
By Counsel

/s/
Nikita Wolf (VSB No. 86939)
Geoff McDonald & Associates, P.C.
8720 Stony Point Pky, Ste. 250
Richmond, Virginia 23235
804.888.8888 Phone
804.359.5426 Facsimile
nwolf@mcdonaldinjurylaw.com
Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing Plaintiff's Expert Disclosure has been forwarded by electronic mail, on this 21st day of February, 2022, to the counsel of record set forth below.

/s/
Nikita Wolf, Esquire

Carter T. Keeney, Esq. (VSB No. 82275)
Carter & Shands, P.C.
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ckeene@carterandshands.com
Counsel for Defendant

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,

Plaintiff,

v.

Case No.: 3:17-CV-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

**MOTION SEEKING RELIEF FROM TRIAL SCHEDULE
AND ENLARGEMENT OF DEADLINES**

The Plaintiff, Samantha Roop, move this Court for relief from the trial schedule and also for an enlargement of deadlines currently set by the Orders of this Court. In particular, the Plaintiff sets forth as follows:

1. On December 15, 2021, the Court entered its Initial Pre-Trial Order (ECF No. 23).

Pursuant to this Order, and of pertinence to this Motion, the following deadlines were established.

- a. Plaintiff's Expert Disclosures – February 21, 2022
- b. Defendant's Expert Disclosures – March 23, 2022
- c. Rebuttal Expert Disclosures – April 4, 2022
- d. Close of Discovery – March 23, 2022
- e. Deadline for filing Daubert Motions – April 12, 2022
- f. Deadline for filing Dispositive Motions – April 12, 2022
- h. Final Pre-Trial Conference – July 1, 2022
- i. Trial – July 21, 2022 through July 22, 2022.

2. The *Federal Rules of Civil Procedure* Rule 26(a)(2)(C) dictates that a party must disclose to the other parties the identity of any witness it may use as trial to present evidence under the *Federal Rules of Civil Procedure* Rule 702, Rule, 703, or Rule 705. Furthermore, the Rule states that there are expert witnesses that fall under this Rule regarding the mandatory disclosure however, there are such experts that are not required to provide a written report.

3. *Walter Banks v. Guy Cook*, No. 3:08CV514, 2009 U.S. Dist. LEXIS 5107 (E.D. Va. Jan. 26, 2009), states:

Pursuant to *Federal Rule of Civil Procedure* 26(a)(2)(B), any party offering an expert witness's testimony at trial is required to produce a written report . . . An exception to this rule is recognized in Virginia law whereby a party's "treating physician [may] offer opinions 'without the necessity of a report under Fed. R. Civ. P. 26(a)(2)(B).'" *McDonald v. Wal-Mart Stores East, L.P.*, No. 3:07cv425, 2008 U.S. Dist. LEXIS 2599, 2008 WL 153782, at *3 (E.D. Va. Jan. 14, 2008) (quoting *Hall v. Sykes*, 164 F.R.D. 46, 48 (E.D. Va. 1995)). The rationale supporting the exception is that while treating physicians process knowledge and opinions as to causation and prognosis that result from their ongoing treatment of a patient, they are not specifically retained to testify and offer an expert opinion as to causation in a particular matter. See *id.*; see also *Moore v. McKibbin Brothers Inc.*, No. 5:98cv923BO2, 1999 U.S. Dist. LEXIS 1728, 1999 WL 1940029, at *1 (E.D.N.C. January 8, 1999). As one Court has explained: "[t]reating physicians are really fact witnesses whose testimony flows from information they learned during the course of their treatment." See *Moore*, 1999 U.S. Dist. LEXIS 1728, 1999 WL 1940029, at *1. However, the exception has been narrowly applied, and Rule 26(a)(2)(B) requirements are only waived when the treating physician's testimony will address only the knowledge they have gained from the ordinary treatment of the patient. See *McDonald*, 2008 U.S. Dist. LEXIS 2599, 2008 WL 153782, at *3 (emphasis added).

4. Counsel for Plaintiff in the instant matter was previously Nikita Wolf, Esquire, formerly of Geoff McDonald and Associates, PC. The separation between Wolf and Geoff McDonald and Associates occurred suddenly with little to no notice on or about Friday February 25, 2022.

5. Shortly thereafter, the case was transferred to Samantha Cohn, current counsel for Plaintiff pursuant to ECFS. 11 through 13, on or about Monday February 28, 2022 within the firm itself and on or about March 16, 2022 by Order of the Court.

6. This new substitution of counsel for Plaintiff occurred informally one week after Plaintiff's Formal Expert Designations were due and officially with the Court by Order, as stated above, more than three weeks after the designations were due as new counsel had to be sworn in to appear before the United States District Court Eastern Division which could not be scheduled until March 8, 2022.

7. Pursuant to Rule 6(b)(1) of the *Federal Rules of Civil Procedure*, the Court may extend deadlines in a case, for good cause shown, both before and after the passage of certain deadlines.

8. Local Rule 7(G) and (I) also give the Court power to extend time although such extensions are looked upon with disfavor.

9. Local Rule 16(B) admonishes that counsel is bound by the dates in the Pre-Trial Scheduling Trial Order and shall not be granted extensions absent a showing of good cause. The Rule further cautions that a failure to proceed promptly with normal discovery responses, alone, shall not constitute good cause.

10. Counsel for Plaintiff presents this *Motion* to the Court, implicating the Rules outlined above, seeking a relief from the Trial Schedule by means of an enlargement of deadlines. Namely, the enlargement sought is an extension by which Plaintiff is permitted to file a singular expert disclosure that does not require a written report.

11. Counsel for Plaintiff is aware, "[t]here is no principle that each new attorney for a litigant must have an independent opportunity to conduct discovery." *Carson v. Bethlehem Steel Corp.*, 82 F.3d 157, 159 (7th Cir. 1996) (quoted in Dkt. No. 838 at 4). Furthermore, Counsel for Plaintiff acknowledges, "that a delay [in the conduct of discovery] attributed to a change in counsel does not constitute good cause [for an extension of the discovery period] because new counsel is bound by the actions of their predecessor. . . . Nonetheless, the court has discretion to consider all factors in a case when determining whether the reopening of discovery should be permitted after remand." *Carnell Constr. Corp. v. Danville Redevelopment & Hous. Auth.*, Civil Action No. 4:10-cv-00007, 2015 U.S. Dist. LEXIS 67033, at *7-8 n.3 (W.D. Va. May 22, 2015).

12. The facts in the instant matter go far beyond a simple change in counsel which, in and of itself, does not rise to the requisite level of good cause demonstratively required for a request to enlarge deadlines to be granted.

13. The change in Plaintiff's Counsel was not requested nor executed by Plaintiff herself in addition to the fact that the change was sudden, unexpected, and without notice.

14. Samantha Cohn, Plaintiff's current counsel, would be under no requirement of due diligence or professional responsibility to be aware of this matter's deadlines as she was not of counsel nor materially participating in the case prior to its transfer to her therefore she did not avail herself of the same. As soon as current counsel became aware of the expired deadlines, acting in good faith, current counsel took affirmative action to move swiftly to rectify the shortcomings of prior counsel.

15. What is tantamount to Plaintiff's argument in support of her *Motion to Enlarge the Deadlines Seeking Relief from the Trial Schedule* is that the Defendant is neither harmed nor prejudiced by Plaintiff's plea. The Plaintiff, however, would be severely prejudiced should her request be denied.

16. Plaintiff wishes to enlarge the deadline to add Dr. Nathan Guerette as a treating physician expert witness that does not require a report as he will only be testifying to his firsthand factual knowledge of his treatment of the Plaintiff. Furthermore, any knowledge or opinions expressed by Dr. Guerette will solely be based on the knowledge he has gained from the ordinary treatment of the patient, the Plaintiff.

17. Plaintiff suffered and continues to suffer a prolapse, a damaged InterStim device, and other intimate pelvic injuries as a result of the accident that is the basis for the instant matter. Dr. Guerette treated and continues to treat Plaintiff for the aforementioned injuries.

18. These intimate pelvic injuries and the costs associated with them account for roughly ninety-five percent (95%) of the Plaintiff's overall injuries and by far have caused the most pain and suffering physically, emotionally, and psychologically.

19. The initial Complaint filing for Plaintiff was submitted to the jurisdiction of the City of Richmond Circuit Court and filed on June 3, 2021. Defense Counsel moved to have the matter removed to Federal Court in October of 2021 due to diversity jurisdiction.

20. Defendant propounded discovery on Plaintiff to which Plaintiff timely responded to in December 2021. Said discovery responses included Dr. Guerette by name as an answer to Interrogatories seven (7), sixteen (16), and nineteen (19) detailing her complaints and his treatments of Plaintiff as a result thereof.

21. Additionally, Dr. Guerette's practice, the Intimate Wellness Institute, was named as an answer to Interrogatories four (4), five (5), and eight (8) as medical providers or facilities where the Plaintiff has sought treatment and incurred expenses.

22. As part of discovery and requirements, the Defendant has been and will continued to be supplied with any and all records of Plaintiff's treatment with Dr. Guerette prior to the close of the discovery deadlines.

23. Furthermore, Defendant is not harmed or prejudiced by this request as Counsel for the Defendant has already deposed Dr. Guerette which occurred on February 8, 2022.

24. Disclosure of Dr. Guerette as an expert witness treating physician of the Plaintiff was properly, albeit informally, made by Plaintiff's previous counsel, Ms. Wolf, and this *Motion* is submitted out of an abundance of caution as it pertains to formal disclosure ensuring the Plaintiff is allowed to call him as a fact witness, to prevent her an enormous prejudice, to elucidate on his treatment of her and any the successive information he gleaned therefrom.

25. Counsel for Plaintiff is cognizant of the fact that enlarging this singular deadline will impact the subsequent deadlines that come after it. These deadlines include Defendant's Expert Disclosures, Rebuttal Expert Disclosures, the Close of Discovery, the Deadline for filing Daubert Motions, and the Deadline for filing Dispositive Motions.

26. The trial is not scheduled until July 21 and 22 of this year with the Final Pre-Trial Conference scheduled for July 1, 2022. Non-Dispositive Motions are due by June 21, 2022 and further designations, such as pertaining to witnesses and evidence, June 13, 2022 and June 21, 2022. There is ample time to enlarge the deadlines up to and through the deadlines for filing Dispositive Motions without impacting the remaining scheduled dates including, most importantly, the trial itself.

27. A three-week extension of the affected deadlines would place the April deadlines to May 3rd at the latest leaving a still full additional month before any subsequent requirements are due further preventing any prejudice or harm to the Defendant as Defendant would still have an adequate opportunity to submit his initial expert disclosures and rebuttal expert disclosures.

28. Additionally, should Defendant request it, Plaintiff is agreeable to making Dr. Guerette available for furthering deposing at the Plaintiff's expense to make certain to Defendant suffers no harm or prejudice by Plaintiff's request.

CONCLUSION

For all the foregoing reasons, the Plaintiff requests that the Court grant this Motion for Relief from Trial Schedule and an Enlargement of Deadlines asserting that good cause exists for the request consist with the Rules as stated within.

SAMANTHA ROOP

By Counsel

/s/
Samantha Cohn (VSB# 89081)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Phone: (804) 888-8888
Facsimile: (804) 359-5426
Email: scohn@mcdonaldinjurylaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of March, 2022, I electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Carter T. Keeney, Esq. (VSB # 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Phone: (804) 747-7470
Facsimile: (804) 747-7977
Email: ckeene@carterandshands.com
Counsel for Defendant

/s/
Samantha Cohn, Esquire

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675-DJN
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

**MEMORANDUM OF FACT AND LAW IN OPPOSITION TO PLAINTIFF'S MOTION
SEEKING RELIEF FROM TRIAL SCHEDULE AND ENLARGMENT OF DEADLINES**

COMES NOW, the Defendant Nicholas James Desousa, by counsel, and for his Memorandum of Fact and Law in Opposition to Plaintiff's Motion Seeking Relief from Trial Schedule and Enlargement of Deadlines states as follows:

PROCEDURAL AND FACTUAL BACKGROUND

This matter arises out of an automobile accident that occurred on July 7, 2019 in Middlesex, Virginia. This matter was removed to this court by the Defendant and is based on diversity jurisdiction. This matter is scheduled for trial on July 21-22, 2022. This Court entered a Scheduling Order on December 21, 2022. *See*, ECF No. 8. Said Order required the Plaintiff to identify any and all experts witnesses no later than February 21, 2022. Treating physicians did not have to provide a written report, but still has to disclose the subject matter on which the witness was expected to testify and a summary of the facts and opinions to which the witness was expected to testify.

Plaintiff in her interrogatory claimed a pelvic prolapse and other intimate pelvic/bladder injuries. This condition was treated by Dr. Nathan Guerrette. He had treated the Plaintiff in the past for previous issues, which required surgery and the implantation of a device. After the motor vehicle accident, Dr. Guerrette first saw the Plaintiff on October 8, 2019. Dr. Guerrette

treated and performed multiple procedures. The medical bills for his treatment are in excess of \$500,000.

These are not conditions that normally occur in motor vehicle accidents. As such, defense counsel sent a subpoena *duces tecum* to Dr. Guerrette's practice and collected his records. Given the abnormal nature of the claim, then Plaintiff's former counsel Nikita Wolf, Esq. and defense counsel agreed to take the joint discovery deposition of Dr. Guerrette. The parties split the cost of the deposition and even submitted a joint deposition notice, which is attached hereto as Exhibit A.

The deposition of Dr. Guerrette was conducted on February 8, 2022, well before the Plaintiff's expert witness disclosure deadline. A copy of Dr. Guerrette's deposition is attached hereto as Exhibit B. Defense counsel went through all of his treatment and then Defense counsel asked the seminal question multiple times. Specifically, Defense counsel asked Dr. Guerrette if he had an opinion to a reasonable degree of medical probability, whether or not the car accident contributed to, in any way to all of the issues he treated the Plaintiff for. Guerrette Dep: 26:14-31:13 (Feb. 8, 2022). Counsel even explained what reasonable degree of medical probability meant to the doctor. At no point did Dr. Guerrette relate his treatment to the accident. He testified he could not relate the same.

Following the deposition, Ms. Wolf and defense counsel spoke and defense counsel was under the distinct impression Dr. Guerrette's treatment was not being claimed. This impression was confirmed on February 21, 2022 when Plaintiff filed her expert witness disclosure and did not disclose Dr. Guerrette. Plaintiff only disclosed Dr. Teresa Camden, who treated the Plaintiff for a head injury and musculoskeletal injuries. *See*, Pls. Exp. Designation, ECF No. 10 a copy which is attached hereto as Exhibit C.

Nikita Wolf, Esq. informed defense counsel that she was leaving Geoff McDonald and Associates, P.C. via text message on February 28, 2022. Samantha Cohn, Esq. then informed counsel she was taking over the case. Of note, Ms. Cohn sat in on the deposition of the parties on January 28, 2022.

Prior to the settlement conference, defense counsel requested an updated statement of damages without Dr. Guerrette's treatment. It was at that point, the Defendant learned that said treatment was still being claimed. Defense counsel informed Ms. Cohn via email he was objecting to the bills and Dr. Guerrette testifying as the expert deadline passed.

Then on March 21, 2022 without meeting and conferring, Plaintiff file the motion seeking to change the expert deadlines. At this point, Plaintiff in a signed pleading stated that the Plaintiff suffered a damaged INterStim device, and other intimate pelvic injuries as a result of the accident despite Dr. Guerrette testifying in his deposition that he could not relate said treatment to the subject accident. Void from the motion to extend the deadlines is any rational for the extension. Plaintiff fails to state any grounds for good cause. There is no reason given as why the deadlines should be enlarged and no real reason as to why the request was made a month after the deadline.

Defense counsel spoke with Plaintiff's counsel after the settlement conference of March 22, 2022, in person and asked her to withdrawal her motion for failing to meet and confer and Plaintiff declined to do so. Counsel also informed her that he would not agree to the deadlines.

Defendant intends to file a motion in limine to exclude the bills for Dr. Guerrete's treatment, to exclude him from testifying and to exclude any mention of the pelvic issues. Plaintiff's counsel is aware of this intention.

DISCUSSION OF LAW AND ARGUMENT

There is no basis for extending the Plaintiff's expert witness deadline and Plaintiff's motion should be denied. Rule 6(b) of the Federal Rules of Civil Procedure states that the court may extend for **good cause** "on motion made **after the time** has expired if the party failed to act because of **excusable neglect**." Local Civil Rule 7(G) and 7(I) concerns continuance of trial and hearing and extension of time for filing motions, not for discovery deadlines. Pursuant to Local Civil Rule 16(B) states that parties are bound by the Pre-Trial Scheduling Order and Trial Order and that extensions will be granted only for good cause. Plaintiff admits change in counsel is not good cause.

In this case, Plaintiff has failed to put forth any argument as to what constitutes good cause or excusable neglect. Plaintiff dances around the issue but is tacitly claiming that a sudden change in counsel after her expert deadline is good cause for changing the deadline. There is no contention that Ms. Wolf was not diligent or competent counsel. This is not a situation wherein Plaintiff did not file any expert disclosure. She disclosed Dr. Camden. Further, Plaintiff had conducted the discovery deposition of Dr. Guerrette wherein he did not relate the treatment to the accident. Thereafter, he was not disclosed. Defendant suggest Dr. Guerrette was not disclosed because he did not relate the treatment.

Now, a month after the deadline, Ms. Cohn wants to disclose Dr. Guerrette and offers no explanation as to why the change in course. Deadlines exist for a reason, and she has offered no rational for changing the same other than that she now wants to claim all of this treatment. This is not a new condition that came to light after the deadline but had been around for a long time.

Plaintiff claims that is significant that the Defendant will suffer no harm of prejudice. However, she provides no case law stating that is a relevant factor. Regardless, the Defendant

would be harmed by this action as it would allow over \$500,000 in medical bills to come into evidence and completely changes the posture of the case. Defendant has not retained an expert to combat these claims as none was needed. Whether or not the Defendant would suffer harm or prejudice is not even a necessary inquiry because Plaintiff does not have good cause for the extension.

CONCLUSION

WHEREFORE, the Defendant, by counsel, respectfully requests that this honorable Court deny Plaintiff's motion seeking relief from trial schedule and enlargement of deadlines and for such other relief as justice may require.

NICHOLAS JAMES DESOUSA,
By Counsel

_____/s/_____, p.d.
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Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 23rd day of March, 2022, I will send via email the foregoing to counsel listed below and I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP,

Plaintiff,

v.

Civil Action No.: 3:21-cv-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

JOINT NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that on **February 8, 2022**, beginning at **5:00 p.m., EST**, at **2931 Polo Parkway, Midlothian, VA 23113**, before a Court Reporter and Notary Public who are not of counsel to either of the parties or interested in the event of the cause, the Plaintiff and the Defendant will take the discovery deposition of **Dr. Nathan Guerette, MD**, pursuant to the Rules of Court, for all purposes relevant to this action. Said deposition will be for the purposes of discovery. Dr. Guerette is requested to bring to the deposition any and all medical records, documents and things, concerning Samantha Roop, last known address: 2291 Mill Road, Powhatan, VA 23139. This deposition may be taken by audio video recording.

Respectfully submitted,
SAMANTHA ROOP
Plaintiff



By Counsel



Nikita Wolf (VSB No. 86939)

Roop v. Desousa
Joint Notice of Deposition
Civil Action No.: 3:21-cv-00675-DJN
Page 1

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SAMANTHA ROOP vs NICHOLAS JAMES DESOUSA
Nathan Guerette, M.D. on 02/08/2022

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION
4 Civil Action No. 3:21-CV-00675-DIN

5 SAMANTHA ROOP
6
7 vs.
8 NICHOLAS JAMES DESOUSA

9
10
11
12 DEPOSITION OF NATHAN GUERETTE, M.D.

13
14
15 Midlothian, Virginia

16 February 8th, 2022

17
18
19
20
21
22 RIVER CITY REPORTING
23 9100 Belcherwood Road
24 Chesterfield, Virginia 23832
25 (804) 370-4051
Reported by: Keith Williamson, RPR, CSR



SAMANTHA ROOP vs NICHOLAS JAMES DESOUSA
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1 Deposition of NATHAN GUERETTE, M.D. taken by
2 and before Keith Williamson, RPR, CSR, Notary Public
3 in and for the Commonwealth of Virginia at large,
4 pursuant to the Rules of the Supreme Court of
5 Virginia and by notice and agreement to take
6 depositions, commencing at approximately 5:06 p.m.

7

8

9 Appearances:

10 Nikita Wolf, Esquire
11 GEOFFREY McDONALD & ASSOCIATES
12 nwolf@mcdonaldinjurylaw.com
13 Attorney, of counsel for plaintiff

14

15 Carter T. Keeney, Esquire
16 CARTER & SHANDS, PC
17 ckeeney@carterandshands.com
18 Attorney, of counsel for defendant

19

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SAMANTHA ROOP vs NICHOLAS JAMES DESOUSA
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1 NATHAN GUERETTE, M.D.

2 was duly sworn and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KEENEY:

5 Q Doctor, can you please state your name?

6 A Nathan Guerette.

7 Q Dr. Guerette, my name is Carter Keeney.
8 I'm a lawyer defending a lawsuit filed by one
9 of your patients, Samantha Roop, against my
10 client, Nicholas Desousa, from an automobile
11 accident.

12 I know obviously you're a doctor. I
13 don't know, you're not like an orthopedist who
14 gets deposed all day. Have you given a
15 deposition before?

16 A Many.

17 Q Well, then I don't need to go over the
18 ground rules with you, but I'm going to speak
19 with you about a patient of yours by the name
20 of Samantha Roop.

21 I understand that she first came under
22 your care back, do you know how far back it
23 was? And I know you don't have access to those
24 records.

25 A I have dates. I don't have the details.

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1 It appears that it was January 7th, 2011.

2 Q All right. And then do you have any
3 recollection of anywhere saying on your
4 computer as to what you initially treated her
5 for back in 2011?

6 A I have to go through these one by one.
7 Incontinence and bladder pain were the main
8 complaints.

9 Q And at some point in that timeframe, it
10 may have been 2012, 2013, did you perform some
11 sort of surgery or implant any sort of device?

12 A She was implanted with a sacral nerve
13 stimulator.

14 Q What is that?

15 A So a sacral nerve stimulator is an
16 implant that is stimulating the third sacral
17 nerve root which is the nerve root that feeds
18 the bladder and the pelvic floor muscles. So
19 it's used for severe overactive bladder that's
20 unresponsive to conservative therapy. It's
21 used for urinary retention, not emptying your
22 bladder well, and it's also used for bowel
23 incontinence because it treats the nerve that
24 feeds those three areas.

25 Q And I think you said you put that in in

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1 **2012?**

2 A The original one, I don't have the
3 surgery date in front of me for the original
4 one, but it's somewhere in that neighborhood
5 because the original time I saw her was between
6 '11 and '13.

7 **Q Did you see her at all between 2013 and**
8 **October 8th of 2019?**

9 A Not based on the records I have in front
10 of me.

11 **Q Perfect. The device that you implanted**
12 **in her, I know you listed as to what their**
13 **purpose is. Do you know what particular reason**
14 **you put it into Ms. Roop?**

15 A So the original implant was for
16 overactive bladder and associated bladder spasm
17 pain and pelvic floor muscle dysfunction which
18 is --

19 **Q Do you have any notes in front of you?**
20 **And I know these are way back so if you can't,**
21 **just tell me that. Do you have any notes as to**
22 **what formed the causation of that with her?**

23 A The original?

24 **Q Yes, sir.**

25 A Her original was idiopathic.

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1 Q And the device, I'm sorry, I forgot the
2 name of it. What was it called?

3 A The brand name is InterStim. That's
4 easier.

5 Q The InterStim that you implanted in her,
6 does it have a shelf life?

7 A Yeah, it's five years.

8 Q And what happens after five years, does
9 the battery run out?

10 A It stops working, yeah.

11 Q And then if the patient's problems come
12 back then, do you need to do a revision?

13 A You need a replacement.

14 Q Or replacement?

15 A Of the battery portion.

16 Q Gotcha. All right. And I take it's
17 fair that from the time you didn't see her from
18 sometime in 2013 up until October 8th of 2019,
19 you had no idea how she was doing; is that
20 fair?

21 A That is fair to say.

22 Q So she reported to your office on
23 October 8th of 2019; is that correct? And I'm
24 going to go to the present now, or relatively
25 present.

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1 A Yeah. This is pre-COVID so the world
2 has changed. October 8th, 2019, correct. Yes.

3 Q And did you take -- what was the reason
4 for her visit at that time?

5 A That she reported worsening urinary
6 incontinence recently and reported that she had
7 had an MVA a short time prior to that which she
8 reported, temporally reported as a significant
9 worsening of her overactive bladder symptoms.

10 Q Do you know or did you ever know when
11 that automobile accident happened?

12 A I do not have a specific date in that
13 record.

14 Q And I take it you spoke with her, took a
15 history and conducted an exam at that point?

16 A I did.

17 Q And did she tell you specifically what
18 symptoms she had that were worsening?

19 A Yes.

20 Q And what were those?

21 A Worsening incontinence and she reported
22 what we call mixed incontinence symptoms
23 meaning that she was having urgent continence,
24 so urgency, frequency, and not making it to the
25 restroom in time due to urgency, as well as

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1 stress incontinence meaning leaking with
2 coughing, sneezing, lifting.

3 Q And stress incontinence doesn't mean
4 stress from anxiety, it means stress from
5 physical activity?

6 A Physical pressure.

7 Q And at that point did you have a
8 diagnosis?

9 A At this point, no. I had the assessment
10 at the end of this visit. She was also noted
11 to have some loss of support in her anterior
12 vaginal wall with a bladder on that visit and
13 she was diagnosed with unspecified urinary
14 incontinence because the character of her
15 symptoms had changed since we'd last seen her
16 as well as the cystocele, which is the loss of
17 bladder support, and pelvic pain. And she was
18 scheduled for a further evaluation.

19 Q And then I take it she came back to you
20 for that further evaluation?

21 A She did.

22 Q And when was that? Is that
23 December 3rd?

24 A So she saw my nurse for urodynamic
25 evaluation on December 2nd and then saw me for

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1 that cystoscopy and consultation on
2 December 3rd.

3 **Q What is a cystoscopy?**

4 A A cystoscopy, that's looking in the
5 bladder with a camera.

6 **Q Gotcha. And what did your nurse**
7 **practitioner do the day before?**

8 A She did a urodynamics test which is a
9 computer assessment of bladder function.

10 **Q And after doing those two things, did**
11 **you form any sort of opinion as to what was**
12 **going on with Ms. Roop?**

13 A So after evaluation she was diagnosed
14 with worsening overactive bladder since her
15 last evaluation. She had urinary retention, so
16 she was not emptying her bladder well, and the
17 cystocele, which is a loss of bladder support.
18 And she was also noted to have what's called
19 dyssynergic voiding meaning that she was not
20 coordinating her pelvic floor muscles or your
21 Kegel muscles appropriately when she was
22 emptying her bladder. So she was essentially
23 squeezing her muscles when she was trying to
24 empty adding to the retention. In simple
25 terms, fighting herself when she's trying to

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1 pee.

2 Q Thank you. And I forgot to mention this
3 earlier, but for any opinions that I ask, I ask
4 that you only give those opinions to a
5 reasonable degree of medical certainty or
6 probability?

7 A Agreed.

8 Q And at that point in December, did you
9 develop a plan of care?

10 A We did. So the plan at that stage was
11 to replace the InterStim unit as it was not
12 functioning appropriately anymore and past its
13 point of expiration, and also to initiate a
14 pelvic floor therapy for her pelvic floor
15 muscle dysfunction.

16 Q And how did you know that the InterStim
17 was not working anymore?

18 A One, based on her symptoms and the
19 testing. And two, we can inquire the device.
20 So just like a pacemaker we can inquire with a
21 remote and look at how it's functioning, look
22 at the battery life, look at whether there's
23 what we call impedances which are if the wires
24 are in any way damaged or not functioning
25 anymore, the electrical current doesn't reach

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1 the target area with the same degree of
2 efficiency that it should.

3 **Q So is it fair to say at this point your**
4 **theory was that her current problems were being**
5 **caused by the InterStim not working properly?**

6 **A** Well, not that simple. So she had
7 essentially three things going on. She had
8 muscle dysfunction, which was new. That did
9 not exist in the last time that we saw her in
10 2013. She had pelvic organ prolapse which is
11 the bladder coming down, which also was new,
12 and then she had worsening of her overactive
13 bladder symptoms, again, which was not new but
14 had been improved in that at the end of 2013,
15 the last time that we saw her, what happened
16 obviously in that six year gap, I don't know.

17 **Q I understand. And then what was your**
18 **plan of care at that point, to try replacing**
19 **the e stim?**

20 **A** Right. So after her reevaluation when
21 she came back to replace the InterStim, that
22 included both replacing the battery and the
23 lead because we can't trust that that lead is
24 intact at that stage, and also to do pelvic
25 floor therapy.

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1 Q What is pelvic floor therapy?

2 A That's essentially physical therapy on
3 the muscles of the pelvis.

4 Q And did she actually do that, or did you
5 give her at home exercises for that?

6 A I do not have any record that she
7 actually did the pelvic floor therapy.

8 Q And my records reflect that you did
9 replace the e stim, I believe, in January of
10 2020, and I think that was done at
11 Johnston-Willis. And I've got that. I don't
12 know if you have access to those surgical
13 operative reports, but I've got it if you need
14 it.

15 A I do, but it will take me a moment to
16 find it.

17 Q I believe it was January 8th of 2020.

18 A I can agree that I believe you.

19 Q And then after that I take it the normal
20 process is for a patient to follow up after the
21 procedure?

22 A Correct.

23 Q And it looks like she followed up with
24 you on January 22nd. Do you have that note?

25 A January 22nd.

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1 Q Of 2020.

2 A I was too far. Yes, I do have that.

3 Q And how was she doing at that time?

4 A Just to be clear, she saw my nurse
5 practitioner. She did not see me.

6 Q And your nurse practitioner practices
7 under your supervision?

8 A Yes.

9 Q And how was she doing at that time when
10 she reported to your office?

11 A She reported that regarding her
12 overactive bladder symptoms that she was doing
13 well. Her frequency had returned to normal and
14 she was not incontinent any longer. However
15 her and her bladder pain syndrome, which is
16 interstitial cystitis, was stable but her
17 prolapse was still bothering her. She reported
18 that she could feel her bladder coming down at
19 that stage.

20 Q And looking at the diagnosis there in
21 addition to overactive bladder, which we've
22 talked about, I think it notes inner, and I'm
23 going to butcher this, but interstitial
24 cystitis?

25 A Interstitial cystitis.

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1 Q What is that?

2 A That's a chronic inflammatory condition
3 of the bladder that causes urgency, frequency
4 and bladder pain.

5 Q What caused that?

6 A We don't know.

7 Q So it's idiopathic?

8 A That is unknown, yes.

9 Q And then it looks like the next time she
10 came to your office was when, February of 2020?

11 A That was February 19th, 2020.

12 Q Did she see your nurse at that time as
13 well?

14 A She saw my nurse practitioner, yes.

15 Q And how was she doing at that time?

16 A That time she reported that the urgency
17 and frequency was more of an issue again, but
18 not complaining of incontinence and her
19 InterStim was reprogrammed.

20 Q Was it not working properly?

21 A No, just it's not uncommon that they
22 need to be reprogrammed when they're initially
23 put back in to find the ideal settings.

24 Q Okay.

25 A And then her prolapse, the bladder

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1 prolapse was still bothering her.

2 Q And then it looks like there was quite a
3 large gap and she didn't come back to you until
4 the end of the year, February, or excuse me,
5 December 4th of 2020?

6 A Correct.

7 Q And how was she doing at that point?

8 A At that point she reported that she was
9 worsened and her voids had significantly
10 improved in frequency. So she was voiding more
11 than 11 times during the day, more than four
12 times at night. She did not have any
13 incontinence. Was having pain with sex,
14 particularly along the front wall of the vagina
15 and having worsening symptoms with her
16 interstitial cystitis, which we abbreviate IC.

17 Q Did you decide to do something different
18 at this point?

19 A Again, the InterStim was reprogrammed,
20 and we made an appointment to have Medtronic
21 evaluate her InterStim unit. So that's the
22 company that makes the unit. So when we need
23 more advanced investigation into the unit, we
24 often get their technician to come in. And
25 that was all we did at that point.

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1 Q And on December 15th, 2020, is that when
2 the rep came in from Medtronic?

3 A Yes, a technician, not a rep.

4 Q It was not the sales rep, it was the
5 technician?

6 A Yes.

7 Q And so on the 5th of December the
8 technician from Medtronic came in your office
9 under your supervision, or you were there as
10 well?

11 A Correct.

12 Q Tried to adjust the InterStim; is that
13 fair?

14 A He did adjust it. He investigated it
15 and adjusted it.

16 Q Was there anything -- do you know what
17 adjustment he did?

18 A Yeah.

19 Q What did he do or she? I don't know.

20 A It's a he.

21 Q Okay.

22 A He put in new programs so what we call
23 the IPG is just the battery inside can have
24 programs changed. There are four contact
25 points on the nerve with the lead and so the

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1 way that the electrical field can be shaped is
2 fairly flexible. And so if the standard way is
3 that we start with aren't working, it can be
4 changed. So he put in some new options and
5 then changed her to one of those options.

6 Q And is that normal for a patient who has
7 an InterStim for awhile, you need to adjust the
8 settings to find what works properly for that
9 patient?

10 A That's not all that unusual to have to
11 do.

12 Q And then it looks like she comes back to
13 you January 5th of 2021; is that right?

14 A Yes.

15 Q And what were her complaints on that
16 visit?

17 A Again, she reports that she was worse
18 again, that her interstitial cystitis was
19 flaring up. So the bladder pain was worse.
20 She was still having frequency, not any
21 incontinence, still having pain with sex
22 located along the front wall of the vagina and
23 the bladder, and the bladder prolapse was noted
24 to have gotten worse at that stage. So we
25 stage bladder prolapse or any prolapse zero is

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1 normal support, four is coming out of the body.
2 She had a stage two when she initially
3 presented in 2019 and on this visit with the
4 reevaluation she had a stage three.

5 Q I want to back up. I forgot to ask you
6 a question. She didn't come between February
7 of 2020 and December of 2020. Obviously COVID
8 hit in between there.

9 Did your office close at all under
10 COVID?

11 A No.

12 Q Did you offer telemedicine or video
13 conferences with patients as well?

14 A We did, but pelvic exams are a
15 challenge.

16 Q The technology is not there. But she
17 didn't call into your office at that time
18 period or send any e-mails or anything?

19 A I wouldn't know how to look up all the
20 phone notes myself right here, but nothing that
21 substantially altered her care.

22 Q So in January 5th when you discovered
23 that, I guess, she was at now stage three
24 prolapse, what was your plan at that particular
25 time?

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1 A So this is January 5th, 2021?

2 Q Yes, sir.

3 A So at this point based on the
4 evaluation, it looked like the prolapse was
5 causing more symptoms both in terms of bladder
6 function and sexual function, and the decision
7 was made to reevaluate her bladder for a
8 lightweight repair of her support.

9 Q And so January 12th, 2021 she came back
10 to your office I have as the next visit. What
11 was the purpose of that visit?

12 A So again, she'd had bladder testing
13 prior to that with my nurse, and then I did a
14 cystoscopy again to reevaluate her bladder, and
15 then we had a consultation to decide what to
16 do.

17 Q And when was that consultation? I think
18 I have January 27th of 2021.

19 A It's February 1st.

20 Q Oh, okay.

21 A No, that's her birthday. The
22 consultation was the same day. It was
23 January 12th.

24 Q And the consultation was about whether
25 or not to try to fix the issue surgically; is

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1 **that fair?**

2 A That is correct.

3 **Q And what was the outcome of that? What**
4 **did she decide to do?**

5 A Yes, we decided to do a vaginal vault
6 suspension bringing the top of the vagina up
7 and fixing the bladder wall. So a cystocele
8 repair.

9 **Q And is the idea there to just kind of**
10 **support the bladder in the place it's supposed**
11 **to be?**

12 A Correct. Yes, both for the discomfort
13 associated with the prolapse and for function
14 and for pain in her case.

15 **Q And I think you ultimately did that**
16 **procedure. I believe it was at Johnston-Willis**
17 **Hospital again on February 10th of 2021? And**
18 **I've got that operative note if you can't lay**
19 **your hands on it.**

20 A Yeah, I'll take a look at it.

21 **Q It will speed things up.**

22 A Yes.

23 **Q This starts on Bates stamp 120, for the**
24 **record, if I'm reading that right.**

25 MR. KEENEY: Nikita, I've got one for

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1 you.

2 A Okay.

3 **Q And what was your postoperative**
4 **diagnosis?**

5 A Was uterine prolapse, vaginal vault
6 prolapse, vaginal prolapse and stress urinary
7 incontinence.

8 **Q And what did you do in that procedure?**

9 A You want the technical names?

10 **Q Layman's terms is great.**

11 A All right. We supported the uterus, the
12 top of the vagina, the bladder, the rectum and
13 supported the urethra to help with the
14 incontinence.

15 **Q The idea was you sort of put everything**
16 **back where it's supposed to go; is that fair?**

17 A Correct.

18 **Q And then in the hope that that would**
19 **return function to normal?**

20 A Correct.

21 **Q And tell me about her recovery from**
22 **that? I think she came back to you on the 19th**
23 **of February, 2021.**

24 A She saw my -- I believe she saw my nurse
25 practitioner then as well and she was nine days

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1 postoperative at this point. She'd come in to
2 have her catheter removed and she successfully
3 voided. So her catheter was removed and told
4 to come back for her routine two week post-op
5 visit.

6 Q Which she did on February 26th, 2021?

7 A Correct.

8 Q And how was she doing at that point?

9 A She was doing better, and her frequency
10 had returned to normal. So she was voiding
11 four to six times a day, which is normal, and
12 not going at night, no incontinence. She was
13 just told to continue her postoperative
14 restrictions and follow up in a month, so six
15 weeks from the surgery.

16 Q And then I take it she followed up, I
17 have in March 25th of 2021. Is that what you
18 have?

19 A Correct.

20 Q And how was she doing at that point?

21 A She was doing well. Normal voiding. No
22 incontinence. No difficulty emptying her
23 bladder or moving her bowels normally. And on
24 exam her support was normal so the prolapse was
25 corrected. And she had a urinary tract

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1 infection which was treated, and her InterStim
2 was checked and doing fine at that point.

3 Q And then I have, and we're almost done
4 going through all these, that she came back
5 May 24th of 2021. I think she had some bladder
6 pain, but was still progressing; is that fair?

7 A Yes. So she was four months post-op.
8 She had a little more frequency that day. She
9 was complaining of pain with sex. She had
10 become sexually active again from the -- after
11 the surgery and was still having pain with sex.
12 Her exam was normal except that her bladder was
13 tender, consistent with the interstitial
14 cystitis. And this was with my nurse
15 practitioner and because of the pelvic pain she
16 wanted her to come back and see me.

17 Q And she did that, I believe, in June of
18 2021?

19 A Yes. The next visit is June 15th of
20 2021 with me.

21 Q And how was she doing at that time? I
22 have June 29th.

23 A Yes, I was just going to say I think we
24 had an appointment but she didn't show up.
25 Yes. So the next appointment was June 29th.

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1 **Q And how was she doing at that point?**

2 **A It looks like she was improved at this**
3 **point. No incontinence, normal voiding but**
4 **complaining of pain with sex and bladder pain**
5 **and the InterStim was reprogrammed. And then**
6 **she was instructed to follow up in two months**
7 **to see if that helped and she has not followed**
8 **up since.**

9 **Q From the time you saw her back in**
10 **October of '19 up until that June 2021 visit,**
11 **do you have an opinion to a reasonable degree**
12 **of medical probability as to what caused her**
13 **issues?**

14 **A Start the first part again, if you**
15 **could:**

16 **Q Yes. From when she came back to you in**
17 **2019, so October of 2019 through the last time**
18 **that you saw her, do you have an opinion to a**
19 **reasonable degree of medical probability as to**
20 **what caused those issues?**

21 **A Caused the issues from the point where**
22 **she re-presented to my final visit with her?**

23 **Q Yes, sir.**

24 **A So when she re-presented in 2019, she**
25 **had exacerbation of some chronic issues. So**

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1 the two things were overactive bladder and
2 interstitial cystitis. Those were issues that
3 we had seen her back from '11 to '13 for. And
4 then she had new issues which were the prolapse
5 and the pelvic floor muscle dysfunction and the
6 retention. And so our process when we
7 initially reevaluated her was to get her
8 chronic problems back under control which was
9 redoing the InterStim and pelvic floor therapy,
10 at least recommendation which she apparently
11 elected not to do. And then due to persistent
12 issues with the prolapse, we ended up
13 addressing that as well with the surgery.

14 Q And I'll come out and ask you, do you
15 have an opinion either way, to a reasonable
16 degree of medical probability, whether or not
17 the car accident contributed to, in any way to
18 all of the issues you treated her for, or you
19 can't say?

20 A I can't say with 100 percent
21 probability. Only thing I can say temporally
22 she relays worsening of her symptoms to when
23 she decided to come in. I obviously only see
24 the aftereffect which was the prolapse, the
25 muscle dysfunction and the overactive bladder.

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1 So I can't know if that caused it, but I do
2 know that she related to it that time period.
3 That's all I can report on. It's certainly not
4 the only thing that can cause these issues.

5 These issues are common issues in
6 general. So anything that causes a force in
7 the pelvis, be it having a baby or lifting
8 heavy things or straining or a traumatic force
9 can cause you to lose support. And then as far
10 as a device goes, that either can wear out with
11 time or can be broken like any device. But I
12 can't know to 100 percent degree of
13 probability.

14 Q Can you testify one way or the other to
15 a reasonable degree of medical probability, and
16 Nikita will smack me if I'm wrong, that just
17 means more likely than not, not necessarily
18 100 percent. It's not like a criminal
19 standard.

20 A Because of the large gap in time, I
21 can't say to a high degree of medical
22 probability that that event occurred in direct
23 relationship with the car accident.

24 Q I think for the -- let's take the
25 InterStim. It can just wear out on its own.

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1 It could break from some traumatic event or
2 just anything; is that fair?

3 It can be any number of things why it
4 stops working; is that fair?

5 A Well, it's not any number. There's a
6 limited number of things, but, yes, it can wear
7 out like any battery, or it can be either the
8 battery or more often the wire can be broken.

9 Q If this sort of condition was either
10 exacerbated or caused by an automobile
11 accident, how long after that incident or any
12 trauma would the individual notice the
13 symptoms?

14 A From the InterStim, relatively quickly.
15 A matter of days or weeks at most.

16 Q And what about the other issues?

17 A The prolapse can be a little bit more
18 insidious in terms of onset. So there tends to
19 be something that causes an insult to the
20 support and then that can worsen over time to
21 the point where it becomes symptomatic. Just
22 like with childbirth, often times we don't see
23 people get symptomatic until years later, but
24 the event occurred then. But that doesn't mean
25 I can pinpoint when that issue started.

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1 Q Can the issues that Mrs. Roop had, can
2 that be caused by repetitive weightlifting
3 heavy objects?

4 A It's possible.

5 Q And is it more likely if you do it
6 repetitively as opposed to just picking
7 something once?

8 A More likely.

9 Q How about, say, helping your husband in
10 his mechanic shop?

11 A Doesn't sound very hypothetical.

12 Q But hypothetically could that also be a
13 cause of these issues?

14 A In general, lifting, straining,
15 childbirth, traumatic events. So anything that
16 falls under any of those umbrellas would apply.

17 Q What about riding a horse?

18 A No.

19 Q So the up and down on a horse won't have
20 any issue?

21 A Not with prolapse, no.

22 Q What about falling off a horse and
23 getting dragged through a field, could that do
24 it?

25 A That's not good. That's certainly a

SAMANTHA ROOP vs NICHOLAS JAMES DESOUSA
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1 trauma. That would not likely cause prolapse,
2 but that certainly can damage the InterStim.

3 Q And one final question, and I know we've
4 sort of been through there, but we are lawyers
5 after all. Can you testify to a reasonable
6 degree of medical probability whether or not
7 your treatment from October of 2019 to the
8 present was causally related to the automobile
9 accident, and I'll represent to you that it
10 happened in July of 2019, that brings us here
11 today?

12 A I mean, even without that date, I can't
13 say to a high degree of medical probability
14 that it occurred at that time in a six month
15 gap. It increases that likelihood that it was
16 not an acute traumatic event, but -- and I'll
17 break it down, if I could answer a little bit
18 more thoroughly, I'll break it down into some
19 pieces.

20 So one aspect is you have a device
21 helping your bladder function and if you're in
22 a car accident, in a traumatic event, and I've
23 been doing this a long time, that definitely
24 happens. People in traumatic accidents break
25 these things. And that absolutely can happen.

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1 It would take less time than six months to
2 notice that.

3 Prolapse, also a high force traumatic
4 event, can initiate that weakening process, but
5 I would not be able to temporally attribute it
6 to an accident happening six months prior, one,
7 because of the time gap and two, because
8 there's other risk factors as well. So to make
9 it simple, I can't, with a high degree of
10 medical probability, attribute it directly to
11 the accident.

12 Q All right. Well, I appreciate your
13 time. I don't have any other questions.

14 CROSS-EXAMINATION

15 BY MS. WOLF:

16 Q I've got a couple of quick follow-ups.
17 And I understand you don't have your records
18 going back further than 2019, and I'm going to
19 keep the depo open so we can get those records
20 and perhaps ask some more follow-up questions
21 about how the other records may influence
22 anything that you may have testified to here
23 today.

24 MR. KEENEY: That's fine.

25 A Sure.

SAMANTHA ROOP vs NICHOLAS JAMES DESOUSA
Nathan Guerette, M.D. on 02/08/2022

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1 Q The new muscle dysfunction and the new
2 pelvic prolapse that you noted in Ms. Roop on
3 the December 19th visit, would you expect to
4 see those issues after an InterStim device
5 failed in a patient?

6 A One has nothing to do with the other.

7 Q Do you remember, actually jumping back
8 to the prior records, do you happen to know who
9 referred Ms. Roop to you initially all the way
10 back in 2011? I don't know if you have access
11 to that information.

12 A Sorry. It's possible. Charles Miller.

13 Q Charles Miller?

14 A Who is a retired Ob/Gyn.

15 Q Most of my questions have comparative
16 value to them so a lot of questions I want to
17 ask you I think it would be better if we came
18 back at another time once you have access to
19 those earlier records. So I'm just going to
20 hold open the depo until we can get access to
21 those records. So thank you very much.

22 MR. KEENEY: I don't have any other
23 questions. And Doctor, I don't know if you
24 know the procedure, but you have to tell Keith
25 if you want to read the transcripts and review

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1 it or waive it.

2 THE WITNESS: I will waive that right.

3 MR. KEENEY: Okay. I'll order it.

4 MS. WOLF: And I'll take a copy.

5 MR. KEENEY: And we're splitting the
6 appearance fee.

7 MS. WOLF: Yes.

8

9 The deposition concluded at approximately 5:48 p.m.

10

11 AND FURTHER THIS DEPONENT SAITH NOT
12 READING AND SIGNATURE WAIVED

13

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1

2 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

3

4 I, Keith Williamson, RPR, CSR, Notary Public in
5 and for the Commonwealth of Virginia at large
6 certify that the aforementioned appeared before me,
7 was sworn by me, and was thereupon examined by
8 counsel and that the foregoing is a true, correct,
9 and full transcript of the testimony adduced.

10 I further certify that I am neither related to
11 nor associated with any counsel or party to this
12 proceeding, nor otherwise interested in the event
13 thereof.

14 Given under my hand and notarial seal at
15 Richmond, Virginia, on February 21st, 2022.

16

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24

25



Keith Williamson, RPR, CSR
Notary Public in and for the
Commonwealth of Virginia at Large

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil No. 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.


ORDER
(Denying Motion for Extension)

This matter comes before the Court on Plaintiff's Motion Seeking Relief from Trial Schedule and Enlargement of Deadlines. (ECF No. 14.) Upon review of the Motion and Defendant's Response (ECF No. 15), the Court hereby DENIES the Motion as devoid of merit.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.

_____/s/_____
David J. Novak
United States District Judge



Richmond, Virginia
Date: March 23, 2022

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

**MOTION IN LIMINE TO EXCLUDE DR. NATHAN GUERETTE FROM TESTIFYING
AT TRIAL, TO EXCLUDE PLAINTIFF'S MEDICAL BILLS FOR DR. GUERETTE'S
TREATMENT AND TO EXCLUDE ANY MENTION OF ANY CONDITION TREATED
BY DR. GUERETTE**

COMES NOW, Nicholas James Desousa, by counsel and for his motion in limine to exclude Dr. Nathan Guerette from testifying at trial, to exclude Plaintiff's medical bills for Dr. Guerette's treatment, and to exclude any mention of any condition treated by Dr. Guerette and states the following.

1. The Defendant moves to exclude Dr. Guerette from testifying at trial, to exclude the medical bills for his treatment from evidence at trial and any mention of the issues for which he provided treatment as the Plaintiff does not have an expert to relate the same and an expert witness is required to opine to the medical necessity and causal relationship between the subject motor vehicle accident and the treatment for the pelvic/bladder injuries.
2. Defendant incorporates his memorandum of fact and law by reference.

WHEREFORE, for the foregoing reasons, the Defendant, by counsel, respectfully requests that this honorable court exclude Dr. Guerette from testifying at trial, exclude the medicals bills attached to the corresponding brief as Exhibit B, and exclude any mention of Plaintiff's treatment with Dr. Guerette and for such other relief as justice may require.

Facsimile: (804) 747-7977
ckeeney@carterandshands.com
Counsel for Defendant

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

**MEMORANDUM OF FACT AND LAW IN SUPPORT OF MOTION IN LIMINE TO
EXCLUDE DR. NATHAN GUERETTE FROM TESTIFYING AT TRIAL, TO
EXCLUDE PLAINTIFF'S MEDICAL BILLS FOR DR. GUERETTE'S TREATMENT
AND TO EXCLUDE ANY MENTION OF ANY CONDITION TREATED BY DR.
GUERETTE**

COMES NOW, Nicholas James Desousa, by counsel and for his motion in limine to exclude Dr. Nathan Guerette from testifying at trial, to exclude Plaintiff's medical bills for Dr. Guerette's treatment, and to exclude any mention of any condition treated by Dr. Guerette and states the following in support thereof:

FACTUAL BACKGROUND

This matter arises out of an automobile accident that occurred on July 7, 2019 in Middlesex, Virginia. This matter was removed to this court by the Defendant and is based on diversity jurisdiction. This matter is scheduled for trial on July 21-22, 2022. This Court entered a Scheduling Order on December 21, 2022. *See*, ECF No. 8. Said Order required the Plaintiff to identify any and all expert witnesses no later than February 21, 2022. Treating physicians did not have to provide a written report.

Per her interrogatory answers, Plaintiff is claiming a pelvic prolapse. *See*, Pls. Ans. to Int. 2 and 3, a copy of which is attached hereto as Exhibit A.

Plaintiff first presented to Dr. Guerrette's office on October 8, 2019, Three months after the accident. She had not mentioned any pelvic or bladder issues to any treating provider prior to that date. She treated with Dr. Guerrette on 10/8/2019, 12/2/2019, 12/3/2019, 12/19/2019, 12/26/2019, 1/8/2020, 1/22/2020, 2/19/2020, 12/4/2020, 12/15/2020, 1/5/2021, 1/11/2021, 1/12/2021, 1/27/2021, 2/19/2021, 2/26/2021, 3/5/2021, 5/24/2021, and 6/29/2021. Plaintiff also had procedures performed by Dr. Guerette at Chippenham Johnston Willis Hospital on January 8, 2020, January 28, 2021, and February 10-11, 2021. A copy of the corresponding bills for the aforementioned treatment is attached hereto as Exhibit B. (All personal identifiers have been redacted).

On February 8, 2022, both parties jointly took the discovery deposition of Dr. Guerette to discern if he would relate the above referenced treatment. A copy of the Joint Notice of Deposition is attached hereto as Exhibit C. At said deposition, Defense counsel went through all of Dr. Guerette's treatment. Defense counsel also asked Dr. Guerette if he had an opinion to a reasonable degree of medical probability whether or not the car accident contributed in any way to all of the issues, he treated the Plaintiff for. Dr. Gurette could not testify to the same. *See*, Gurette Depo. 26:14-31:11 (Feb. 8, 2022). A copy Dr. Guerette's deposition are attached hereto as Exhibit D.

On February 21, 2022, Plaintiff filed her expert witness disclosure. Dr. Guerette was not disclosed. The only witness disclosed was Dr. Camden, who treated the Plaintiff for injuries to her head, neck, left shoulder, and contusions. A copy of Plaintiff's Expert Witness Disclosure is attached hereto as Exhibit E. Dr. Camden's disclosure makes no mention of Plaintiff's pelvic/bladder issues and no expert was disclosed to opine on these issues. Based on Plaintiff's Expert Disclosure, Defendant was under the impression that Dr. Guerette's treatment and/or the

pelvic/bladder issues were not being claimed. Further, Defendant's interrogatory number 11 requested that Plaintiff identify all experts she will rely upon at trial and Plaintiff did not disclose Dr. Guerette in response to the same.

Plaintiff filed a motion to extend the expert deadlines, but this court denied the same, so the Plaintiff will not have an expert on said issue.

After the Court denied the motion to extend the expert deadlines, defense counsel spoke with Plaintiff's counsel and asked her to drop the claim for the bills listed herein. The request was denied.

Defendant certifies he made a good faith effort to resolve this dispute, prior to filing this motion.

DISCUSSION OF LAW AND ARGUMENT

- I. *Dr. Guerrette should not be permitted to testify as an expert or fact witness as Plaintiff failed to disclose him as an expert and any factual testimony is not relevant to any fact at issue.*

Plaintiff failed to disclose Dr. Guerette as an expert witness pursuant to this Court's Scheduling Order. Pursuant to Rule 26(a)(2)(C) Plaintiff was required to disclose the subject matter on which the witness was expected to testify and a summary of the facts and opinions to which the witness was expected to testify. Pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure if a party fails to identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence at trial unless the failure was substantially justified or is harmless.

"A party must disclose to the other parties the identity of any witness it may use at trial to present" expert testimony. Fed. R. Civ.P. 26(a)(2)(A)...in cases where a full report is not required, the disclosure need only state "(i) the subject matter on which the witness is expected to present evidence ...; and (ii) a summary of the facts and opinions to which the witness is expected to testify." Fed. R. Civ. P. 26(a)(2)(C). **As they are not typically "retained or specially employed to**

provide expert testimony," treating physicians are not ordinarily required to file Rule 26(a)(2)(B) expert reports. *See Perkins v. United States*, 626 F. Supp. 2d 587, 590 (E.D. Va. 2009). A party seeking to introduce treating physician testimony should generally comply with Rule 26(a)(2)(C). *Schmitt-Doss v. Am. Regent, Inc.*, 2014 U.S. Dist. LEXIS 107505 (W.D.Va. 2014) aff'd, 599 F. App'x 71 (4th Cir. 2015).

A Plaintiff's treating doctors must be disclosed in accordance with Rule 26(a)(2)(C), because "testimony as to the diagnosis and treatment of a patient and the reasons, therefore, is beyond the ability of the average lay witness' competency and is necessarily based on the experts scientific, technical, or other specialized knowledge, in the form of doctors' medical training and experience. *Cripe v. Henkel Corp.*, 318 F.R.D. 356, 362 (N.D. Ind.), aff'd, 858 F.3d 1110 (7th Cir. 2017) (excluding plaintiff's treating physician from testifying at trial since they were not disclosed).

Any party that fails to make a disclosure pursuant to Rule 26(a) is not permitted to use as any of the non-disclosed information as evidence. *See, Sharpe v. United States*, 230 F.R.D. 452, 456 (E.D.Va. 2005). A failure to disclose an expert results in that expert being excluded from testifying at trial pursuant to Rule 37(c)(1). *Id.* at 458.

In this case, Plaintiff failed to disclose Dr. Guerette and as such he should not be permitted to testify as an expert. The failure to disclose him is not substantially justified or harmless. Plaintiff had counsel who took his discovery deposition and thereafter chose not to disclose him because he would not relate the treatment to the subject accident. A change in counsel after the expert deadline is not justification. Further, this is not harmless to the defense as the defense has not retained an expert to refute Dr. Guerrette because he testified, he was not relating the treatment and Plaintiff did not disclose him. Without Dr. Guerette over \$500,000 in medical bills are excluded from trial.

Wherefore, Dr. Guerette should be excluded as an expert witness from trial.

If he is not testifying as an expert, any factual testimony is not relevant to any fact at issue in this matter. Without an expert to opine that Dr. Guerette's treatment and said injuries are causally related to the subject accident, such evidence is not relevant to any fact at issue.

II. The medical bills for Dr. Guerette's treatment should be excluded from evidence as no expert will opine they were causally related to the subject accident.

Plaintiff's medical bills for Dr. Guerette's treatment should be excluded from trial as no expert will opine that said treatment was causally related to the subject accident. Since this is a diversity case, the court under *Erie R.R. Co. v Tompkins*, 304 U.S. 64, 78-79, 58 S. Ct. 817, 82 L. Ed. 1188 (1938) must apply Virginia substantive law. While this motion addresses the evidence the court will allow to be presented at trial, the court's decision turns on the type of damages that are allowed in personal injury cases under Virginia substantive law. Thus, Virginia substantive law controls. *Wright v. Smith*, 641 F. Supp. 2d 536 (W.D.Va. 2009). The question of whether a particular treatment is medically necessary, as well as causally related to a condition resulting from some act or omission on a defendant's part, can usually only be determined by a medical expert qualified in the appropriate field. *Id.* (citing, *McMunn v. Tatum*, 237 Va. 558, 379 S.E.2d 908 (1989)). *McMunn*, also states that where a Defendant objects to the introduction of medical bills, indicating that the Defendant's evidence will raise a substantial contest as to the question of medical necessity or causal relationship, then the medical bills can only come into evidence with expert testimony establishing the same. *Id.* at 541 (holding that *McMunn v. Tatum* applies in federal cases based on diversity).

Defendant has a substantial contest to the bills given the gap in treatment, Dr. Guerette's prior deposition testimony, the fact the Plaintiff told her physical therapist she was 100% recovered from the accident in October of 2019 and the fact in September of 2019 Plaintiff was

dragged through a field by a horse, the fact the Plaintiff had prior issues with the same part of her body and the substantial gap in time before any complaints concerning her pelvis/bladder.

The causation of a complicated medical issue like a prolapse and bladder issues certainly requires expert testimony as it is beyond the purview of a layperson. In general, the causation of a plaintiff's injury requires expert testimony. *Fitzgerald v. Manning*, 679 F.2d 341, 350 (4th Cir. 1982).

Without an expert to opine the medical bills are related to the subject accident, the medical bills are not admissible under *McMunn v. Tatum*. Further, said bills are not admissible without the proper foundational testimony from an expert.

Wherefore, the Defendant moves to exclude from evidence at trial all of the medical bills attached hereto as Exhibit B.

III. *Any mention of the conditions plaintiff treated with Dr. Guerette for should be excluded from trial as they are not relevant to any fact at issue.*

Plaintiff should be excluded from mentioning any pelvic or bladder issue at trial as they are not relevant to any fact at issue. As stated herein, a doctor is required to opine as to the causation of the injuries to Plaintiff's pelvic/bladder area. As no such doctor can testify to that, any testimony by the Plaintiff regarding the same is not relevant and would serve to confuse or mislead the jury and should be excluded pursuant to Rules 401, 402 and 403 of the Federal Rules of Evidence. Plaintiff herself should not be permitted to testify that these issues were caused by the accident as she is not qualified to state the same.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Defendant, by counsel, respectfully requests that this honorable court exclude Dr. Guerette from testifying at trial, exclude the medicals bills attached hereto as Exhibit B, and exclude any mention of Plaintiff's treatment

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP,

Plaintiff,

v.

Civil Action No.: 3:21-cv-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

**PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES &
REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW Plaintiff, Samantha Roop, by counsel, and for her Answers to Defendant's First Set of Interrogatories and Requests for Production of Documents, states as follows:

ANSWERS TO INTERROGATORIES

1. State your full legal name, address, date of birth, Social Security Number, telephone number, educational background, occupation, and marital status.

ANSWER: Samantha Roop,

39; DOB:

Defendant may call counsel for Plaintiff to obtain Plaintiff's telephone number and social security number. These will not be disclosed in a public document.

2. Identify each and every specific injury you claim to have sustained in the accident sued upon, whether they be physical, mental, emotional or otherwise, describing each specific

Roop v. Desousa
Plaintiff's Answers to Defendant's First Set of Discovery
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Page 1



injury by the exact parts of the anatomy affected and the approximate time or date each such injury was first detected. If medical records are attached, list below those records which are responsive to this Interrogatory. You are under a continuing duty to supplement this as well as all Interrogatories.

ANSWER: To the best of her ability as a layperson, Plaintiff understands that her crash-related injuries were: concussion, migraines, pelvic prolapse, bruises on shoulder and hips, bruise and abrasion on head from hitting seat belt holder, whiplash, and concussion-related symptoms such as light and noise sensitivity, trouble processing, nausea, irritability, etc.

Plaintiff hereby further relies upon and incorporates the opinions of her expert witnesses and treating providers as if fully restated herein.

3. Identify any similar condition, injury and/or handicap you have experienced at any time prior to the accident, giving a full and complete description of those difficulties, including time and circumstances of the occurrence and frequency and duration of those difficulties.

ANSWER: Plaintiff states that she has a prior history of pelvic issues, but never had a prolapse before this crash. It is Plaintiff's understanding that her doctor initially thought her stomach pain/cramps were related to the previously-placed pelvic device, but after he replaced the battery in the device and that didn't relieve her pain, her doctor then believed that it was a combination of the force of the impact knocking her bladder out of its sling

coupled with the weakened muscles that occurred as a result of being bedridden immediately following the crash that led to the prolapse.

4. Identify the names, **including complete street address, city, and state**, of any and all hospitals where you were confined or treated for any purpose whatsoever within the last fifteen (15) years before your receipt of these Interrogatories, specifying in each case the year, the nature of the treatment or other service, as well as the condition, injury, or reason for same. In your Answer, state your Social Security Number and date of birth.

ANSWER: Plaintiff's date of birth and social security number were previously addressed in her Answer to Interrogatory 1.

**St. Francis Watkins Center
601 Watkins Centre Pkwy, Midlothian, VA 23113
(804) 594-2100**

**Richmond Emergency Physicians
5855 Bremon Rd, Richmond, VA 23226
(804) 287-7066**

**Emergency Coverage Corporation
7101 Jahnke Rd Richmond, VA 23225**

**Commonwealth Radiology
2810 N Parham Rd Suite 315, Richmond, VA 23294
(804) 288-8327**

**Powhatan Medical Associates
3452 Anderson Hwy Suite D, Powhatan, VA 23139
(804) 285-6050**



Blue Cross Blue Shield Virginia (Anthem BCBS VA)

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

VA

<input type="checkbox"/> PICA		<input type="checkbox"/> PICA	
1. MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA <input checked="" type="checkbox"/> OTHER <input checked="" type="checkbox"/> (ID#)		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
3. PATIENT'S BIRTH DATE MM DD YY M F <input checked="" type="checkbox"/> SEX		7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)	
5. PATIENT'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)		6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) a. OTHER INSURED'S POLICY OR GROUP NUMBER b. RESERVED FOR NUCC USE c. RESERVED FOR NUCC USE d. INSURANCE PLAN NAME OR PROGRAM NAME		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 10d. CLAIM CODES (Designated by NUCC)	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 10/15/2019		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE MM DD YY QUAL	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD Ind. 0 A. IR32 B. N8110 C. LR102 D. E. F. G. H. I. J. K. L.		22. RESUBMISSION CODE ORIGINAL REF. NO 49D2137274	
24. A. DATE(S) OF SERVICE From To B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS POINTER F. CHARGES G. DAYS ON UNITS H. EXCISE Fee/Unit I. ID QUAL J. RENDERING PROVIDER ID. #		23. PRIOR AUTHORIZATION NUMBER 49D2137274	
1 10 08 2019 10 08 2019 11 51798 ABC 29 04 1 ZZ 207VF0040X 1942230040		2 10 08 2019 10 08 2019 11 88142 ABC 40 00 1 ZZ 207VF0040X 1942230040	
3 10 08 2019 10 08 2019 11 82570 QW ABC 10 00 1 ZZ 207VF0040X 1942230040		4 10 08 2019 10 08 2019 11 99204 25 ABC 246 06 1 ZZ 207VF0040X 1942230040	
5 10 08 2019 10 08 2019 11 81003 QW ABC 5 00 1 ZZ 207VF0040X 1942230040		6	
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/>		26. PATIENT'S ACCOUNT NO.	
27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		28. TOTAL CHARGE \$ 330 10 \$ 0	
29. AMOUNT PAID \$ 00		30. Rsd for NUCC Use	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 SIGNED 10/15/2019 DATE		32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900 a. 1356571616 b. 1356571616 c. ZZ193400000X	
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900		34. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)



JA110



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

PICA										PICA									
1. MEDICARE (Medicare#) <input type="checkbox"/> MEDICAID (Medicaid#) <input checked="" type="checkbox"/> TRICARE (ID#DoD#) <input type="checkbox"/> CHAMPVA (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN (ID#) <input type="checkbox"/> FECA (FECA#) <input type="checkbox"/> OTHER (ID#) <input type="checkbox"/>										1a. INSURED'S I.D. NUMBER (For Program in Item 1)									
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J										3. PATIENT'S BIRTH DATE MM DD YY 02 26 2021									
5. PATIENT'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)										4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J									
6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>										7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)									
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)										10. IS PATIENT'S CONDITION RELATED TO:									
a. OTHER INSURED'S POLICY OR GROUP NUMBER										a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
b. RESERVED FOR NUCC USE										b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
c. RESERVED FOR NUCC USE										c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
d. INSURANCE PLAN NAME OR PROGRAM NAME										10d. CLAIM CODES (Designated by NUCC)									
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 02/26/2021										11. INSURED'S POLICY GROUP OR FECA NUMBER									
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL										15. OTHER DATE MM DD YY QUAL									
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON										18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY									
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)										20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00									
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. IR32 B. LR102 C. LR399 D. E. F. G. H. I. J. K. L. NPI 1659484525										22. RESUBMISSION CODE 7 ORIGINAL REF. NO. 176741544700									
23. PRIOR AUTHORIZATION NUMBER 49D2137274										24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. EPSON Family Plan I. ID. QUAL J. RENDERING PROVIDER ID. #									
1 12 02 2019 12 02 2019 11 51729 ABC 513 32 1 NPI 1942230040																			
2 12 02 2019 12 02 2019 11 51784 ABC 215 00 1 NPI 1942230040																			
3 12 02 2019 12 02 2019 11 51797 ABC 168 83 1 NPI 1942230040																			
4 12 02 2019 12 02 2019 11 51741 ABC 23 87 1 NPI 1942230040																			
5																			
6																			
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> <input type="checkbox"/>										26. PATIENT'S ACCOUNT NO									
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 02/26/2021										32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900									
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900										28. TOTAL CHARGE \$ 921 02 \$ 0 00 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use									
SIGNED DATE 02/26/2021										34. 1356571616 35. 1356571616 36. ZZ193400000X									

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

JA111



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

1. MEDICARE <input type="checkbox"/> (Medicare) <input checked="" type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> (Medicaid) <input type="checkbox"/> TRICARE <input type="checkbox"/> (DoD) <input type="checkbox"/> CHAMPVA <input type="checkbox"/> (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> (ID#) <input type="checkbox"/> FECA BULKING <input type="checkbox"/> (ID#) <input type="checkbox"/> OTHER <input type="checkbox"/> (ID#)		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
5. PATIENT'S ADDRESS (No., Street) [REDACTED]		7. INSURED'S ADDRESS (No., Street) [REDACTED]	
6. PATIENT'S BIRTH DATE [REDACTED] SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F		8. RESERVED FOR NUCC USE	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO:	
a. OTHER INSURED'S POLICY OR GROUP NUMBER		a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
b. RESERVED FOR NUCC USE		b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State)	
c. RESERVED FOR NUCC USE		c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
d. INSURANCE PLAN NAME OR PROGRAM NAME		11. INSURED'S POLICY GROUP OR FECA NUMBER	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 02/26/2021		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE MM DD YY QUAL	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DR JOSEPH, SHARON		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. LN8110 B. LR102 C. LN3281 D. R339 E. F. G. H. I. J. K. L.		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE EMG C. D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER		22. RESUBMISSION CODE 7 ORIGINAL REF. NO. 176815207000	
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> <input type="checkbox"/>		23. PRIOR AUTHORIZATION NUMBER 49D2137274	
26. PATIENT'S ACCOUNT NO.		27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
28. TOTAL CHARGE \$ 600 73		29. AMOUNT PAID \$ 0 00	
30. Rsvd for NUCC Use		31. BILLING PROVIDER INFO & PH # (804) 5232533	
32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900		33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5801 BREMO RD RICHMOND VA 23226-1900	
34. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 SIGNED DATE 02/26/2021		35. SIGNATURE OF SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) SIGNED DATE 02/26/2021	

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HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

<input type="checkbox"/> PICA												<input type="checkbox"/> PICA											
1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BLK LUNG <input type="checkbox"/> OTHER <input type="checkbox"/>												1a. INSURED'S I.D. NUMBER (For Program in Item 1)											
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J												4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J											
5. PATIENT'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)												7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)											
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)												11. INSURED'S POLICY GROUP OR FECA NUMBER											
a. OTHER INSURED'S POLICY OR GROUP NUMBER												a. INSURED'S DATE OF BIRTH SEX											
b. RESERVED FOR NUCC USE												b. OTHER CLAIM ID (Designated by NUCC)											
c. RESERVED FOR NUCC USE												c. INSURANCE PLAN NAME OR PROGRAM NAME											
d. INSURANCE PLAN NAME OR PROGRAM NAME												d. IS THERE ANOTHER HEALTH BENEFIT PLAN?											
READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.																							
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE: I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.												13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE: I authorize payment of medical benefits to the undersigned physician or supplier for services described below.											
SIGNED Signature on file DATE 02/26/2021												SIGNED Signature on file											
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP)												15. OTHER DATE											
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON												18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES											
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)												20. OUTSIDE LAB? \$ CHARGES											
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY: Relate A-L to service line below (24E)												22. RESUBMISSION CODE ORIGINAL REF. NO.											
A LN8110 B LR102 C LN3281 D R339												7 177621623700											
24. A. DATE(S) OF SERVICE From To B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. EPSON Family Plan I. ID. QUAL. J. RENDERING PROVIDER ID. #																							
1 12 19 2019 12 19 2019 11 64561 50 C D 2484 58 2 NPI 1942230040																							
2																							
3																							
4																							
5																							
6																							
25. FEDERAL TAX I.D. NUMBER SSN EIN												26. PATIENT'S ACCOUNT NO.											
27. ACCEPT ASSIGNMENT?												28. TOTAL CHARGE 29. AMOUNT PAID 30. Rsvd for NUCC Use											
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040												32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900											
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900																							
SIGNED DATE 02/26/2021												a. 1356571616 b. ZZ19340000X											

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

JA113



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA <input type="checkbox"/> OTHER <input type="checkbox"/>		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		3. PATIENT'S BIRTH DATE MM DD YY	
5. PATIENT'S ADDRESS (No., Street) CITY STATE ZIP CODE		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO:	
a. OTHER INSURED'S POLICY OR GROUP NUMBER		a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
b. RESERVED FOR NUCC USE		b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
c. RESERVED FOR NUCC USE		c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
d. INSURANCE PLAN NAME OR PROGRAM NAME		10d. CLAIM CODES (Designated by NUCC)	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below.	
SIGNED Signature on file DATE 02/26/2021		SIGNED Signature on file	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY		15. OTHER DATE MM DD YY	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. IN0110 B. LR102 C. LN3281 D. LR339		22. RESUBMISSION CODE 7 ORIGINAL REF. NO. 178197388500	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS POINTER		23. PRIOR AUTHORIZATION NUMBER 49D2137274	
1 12 26 2019 12 26 2019 11 51798 ABCD 29 04 1 NPI 1942230040			
2 12 26 2019 12 26 2019 11 82570 ABCD 10 00 1 NPI 1942230040			
3 12 26 2019 12 26 2019 11 99214 25 ABCD 161 24 1 NPI 1942230040			
4 12 26 2019 12 26 2019 11 81003 QW ABCD 5 00 1 NPI 1942230040			
5			
6			
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/>		26. PATIENT'S ACCOUNT NO.	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040		27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900		28. TOTAL CHARGE \$ 205 28 29. AMOUNT PAID \$ 0 00	
33. BILLING PROVIDER INFO & PH # (804) 5232593 FEMALE PELVIC MEDICINE INSTITUTE 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900		30. Rsvd for NUCC Use	
SIGNED DATE 02/26/2021		R. 1356571616 b. ZZ193400000X	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

JA115



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

PICA										PICA									
1. MEDICARE (Medicare#) <input type="checkbox"/> MEDICAID (Medicaid#) <input checked="" type="checkbox"/> TRICARE (ID#/DoD#) <input type="checkbox"/> CHAMPVA (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN (ID#) <input type="checkbox"/> FECA BENEFIT (ID#) <input type="checkbox"/> OTHER (ID#) <input type="checkbox"/>										18. INSURED'S I.D. NUMBER (For Program in Item 1)									
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J										3. PATIENT'S BIRTH DATE MM DD YY 01 22 2020									
5. PATIENT'S ADDRESS (No., Street) [REDACTED]										6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>									
CITY [REDACTED]										CITY [REDACTED]									
STATE [REDACTED]										STATE [REDACTED]									
ZIP CODE [REDACTED]										ZIP CODE [REDACTED]									
TELEPHONE (Include Area Code) [REDACTED]										TELEPHONE (Include Area Code) [REDACTED]									
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)										10. IS PATIENT'S CONDITION RELATED TO:									
a. OTHER INSURED'S POLICY OR GROUP NUMBER										a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
b. RESERVED FOR NUCC USE										b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
c. RESERVED FOR NUCC USE										c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO									
d. INSURANCE PLAN NAME OR PROGRAM NAME										10d. CLAIM CODES (Designated by NUCC)									
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file										11. INSURED'S POLICY GROUP OR FECA NUMBER									
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY 01 22 2020										15. OTHER DATE MM DD YY 01 22 2020									
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON										18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY 01 22 2020 01 22 2020									
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)										20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00									
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. I N3281 B. I N8110 C. I R102 D. R339 E. I N3011 F. I G. I H. I I. I J. I K. I L. I										22. RESUBMISSION CODE 7 ORIGINAL REF. NO. 179094449000									
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) EPTHCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. EXPT/Facility Part I. ID. QUAL J. RENDERING PROVIDER ID #										23. PRIOR AUTHORIZATION NUMBER 49D2137274									
1 01 22 2020 01 22 2020 11 95972 ABCD 87 63 1 NPI 1942230040																			
2 01 22 2020 01 22 2020 11 82570 ABCD 10 00 1 NPI 1942230040																			
3 01 22 2020 01 22 2020 11 51798 ABCD 29 04 1 NPI 1942230040																			
4 01 22 2020 01 22 2020 11 99024 ABCD 0 00 1 NPI 1942230040																			
5 01 22 2020 01 22 2020 11 81003 QW ABCD 5 00 1 NPI 1942230040																			
6																			
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>										26. PATIENT'S ACCOUNT NO.									
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on this reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040										27. ACCEPT ASSIGNMENT? (For govt. claims, see 0930) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO									
32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900										28. TOTAL CHARGE \$ 131 67 29. AMOUNT PAID \$ 0 00 30. Ptsd for NUCC Use									
SIGNED DATE 02/26/2021										33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900									
a. 1356571616										b. 1356571616 c. ZZ193400000X									

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

JA116



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BULKING <input type="checkbox"/> OTHER <input type="checkbox"/> (Medicare) (Medicaid) (ID#(DoD#)) (Member ID#) (ID#) (ID#) (ID#)										1a. INSURED'S I.D. NUMBER (For Program in Item 1) [REDACTED]																																																	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J										3. PATIENT'S BIRTH DATE [REDACTED]										4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J																																							
5. PATIENT'S ADDRESS (No., Street) [REDACTED]										6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>										7. INSURED'S ADDRESS (No., Street) [REDACTED]																																							
CITY [REDACTED] STATE [REDACTED] ZIP CODE [REDACTED] TELEPHONE (Include Area Code) [REDACTED]										8. RESERVED FOR NUCC USE X										CITY [REDACTED] STATE [REDACTED] ZIP CODE [REDACTED] TELEPHONE (Include Area Code) [REDACTED]																																							
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) a. OTHER INSURED'S POLICY OR GROUP NUMBER b. RESERVED FOR NUCC USE c. RESERVED FOR NUCC USE d. INSURANCE PLAN NAME OR PROGRAM NAME										10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> b. AUTO ACCIDENT? PLACE (State) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> c. OTHER ACCIDENT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> 10d. CLAIM CODES (Designated by NUCC)										11. INSURED'S POLICY GROUP OR FECA NUMBER a. INSURED'S DATE OF BIRTH [REDACTED] M <input type="checkbox"/> F <input checked="" type="checkbox"/> b. OTHER CLAIM ID (Designated by NUCC) c. INSURANCE PLAN NAME OR PROGRAM NAME d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If yes, complete items 9, 9a, and 9d.																																							
READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM. 12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 11/16/2020																				13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file																																							
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL										15. OTHER DATE MM DD YY QUAL										16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY																																							
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON										17a. [REDACTED] 17b. NPI 1559484525										18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY																																							
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)										20. OUTSIDE LAB? \$ CHARGES YES <input type="checkbox"/> NO <input type="checkbox"/> 0 00										22. RESUBMISSION CODE 7 ORIGINAL REF. NO. 180473488400																																							
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD-10 A. I N3281 B. I N8110 C. I R102 D. R339 E. I N3011 F. G. H. I. K. L.										23. PRIOR AUTHORIZATION NUMBER 49D2137274																																																	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. ICD-10 QUAL I. ID QUAL J. RENDERING PROVIDER ID #																																																											
1 02 19 2020 02 19 2020 11 95972 ABCD 87 63 1 NPI 1942230040																																																											
2 02 19 2020 02 19 2020 11 82570 QW ABCD 10 00 1 NPI 1942230040																																																											
3 02 19 2020 02 19 2020 11 51798 ABCD 29 04 1 NPI 1942230040																																																											
4 02 19 2020 02 19 2020 11 99024 ABCD 0 00 1 NPI 1942230040																																																											
5 02 19 2020 02 19 2020 11 81003 QW ABCD 5 00 1 NPI 1942230040																																																											
6																																																											
25. FEDERAL TAX I.D. NUMBER SSN EIN [REDACTED]										26. PATIENT'S ACCOUNT NO. [REDACTED]										27. ACCEPT ASSIGNMENT? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>										28. TOTAL CHARGE \$ 131 67										29. AMOUNT PAID \$ 0 00										30. Paid for NUCC Use									
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 SIGNED 11/16/2020 DATE										32. SERVICE FACILITY LOCATION INFORMATION DO NOT USE 5 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900 a. 1356571616										33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 5875 BREMO RD SUITE 701 RICHMOND VA 23226-1900 a. 1356571616 b. ZZ193400000X																																							

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

JA117

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

<div style="display: flex; justify-content: space-between;"> <div> <div style="display: flex; justify-content: space-between;"> <div> <div>1. MEDICARE</div> <div><input type="checkbox"/> (Medicare#)</div> </div> <div> <div>2. MEDICAID</div> <div><input checked="" type="checkbox"/> (Medicaid#)</div> </div> <div> <div>3. TRICARE</div> <div><input type="checkbox"/> (ID#/DoD#)</div> </div> <div> <div>4. CHAMPVA</div> <div><input type="checkbox"/> (Member ID#)</div> </div> <div> <div>5. GROUP HEALTH PLAN</div> <div><input type="checkbox"/> (ID#)</div> </div> <div> <div>6. FECA BENEFIT</div> <div><input type="checkbox"/> (ID#)</div> </div> <div> <div>7. OTHER</div> <div><input type="checkbox"/> (ID#)</div> </div> </div> <div> <div>8. INSURED'S I.D. NUMBER</div> <div>(For Program in Item 7)</div> </div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>2. PATIENT'S NAME (Last Name, First Name, Middle Initial)</div> <div>ROOP, SAMANTHA J</div> </div> <div> <div>3. PATIENT'S BIRTH DATE</div> <div>SEX</div> </div> <div> <div>4. INSURED'S NAME (Last Name, First Name, Middle Initial)</div> <div>ROOP, SAMANTHA J</div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>5. PATIENT'S ADDRESS (No., Street)</div> <div>CITY</div> <div>STATE</div> <div>ZIP CODE</div> <div>TELEPHONE (Include Area Code)</div> </div> <div> <div>6. PATIENT RELATIONSHIP TO INSURED</div> <div>Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/></div> <div>7. INSURED'S ADDRESS (No., Street)</div> <div>CITY</div> <div>STATE</div> <div>ZIP CODE</div> <div>TELEPHONE (Include Area Code)</div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)</div> <div>a. OTHER INSURED'S POLICY OR GROUP NUMBER</div> <div>b. RESERVED FOR NUCC USE</div> <div>c. RESERVED FOR NUCC USE</div> <div>d. INSURANCE PLAN NAME OR PROGRAM NAME</div> </div> <div> <div>10. IS PATIENT'S CONDITION RELATED TO:</div> <div>a. EMPLOYMENT? (Current or Previous)</div> <div>b. AUTO ACCIDENT?</div> <div>c. OTHER ACCIDENT?</div> <div>10d. CLAIM CODES (Designated by NUCC)</div> </div> <div> <div>11. INSURED'S POLICY GROUP OR FECA NUMBER</div> <div>a. INSURED'S DATE OF BIRTH</div> <div>b. OTHER CLAIM ID (Designated by NUCC)</div> <div>c. INSURANCE PLAN NAME OR PROGRAM NAME</div> <div>d. IS THERE ANOTHER HEALTH BENEFIT PLAN?</div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE</div> <div>SIGNED</div> <div>DATE</div> </div> <div> <div>13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE</div> <div>SIGNED</div> <div>DATE</div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP)</div> <div>17. NAME OF REFERRING PROVIDER OR OTHER SOURCE</div> <div>19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)</div> </div> <div> <div>15. OTHER DATE</div> <div>17a. NPI</div> <div>17b. NPI</div> </div> <div> <div>16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION</div> <div>18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES</div> <div>20. OUTSIDE LAB?</div> <div>22. RESUBMISSION CODE</div> <div>23. PRIOR AUTHORIZATION NUMBER</div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY</div> <div>A. ICD-9</div> <div>B. ICD-10</div> <div>C. ICD-9</div> <div>D. ICD-10</div> </div> <div> <div>24. A. DATE(S) OF SERVICE</div> <div>B. PLACE OF SERVICE</div> <div>C. EMG</div> <div>D. PROCEDURES, SERVICES, OR SUPPLIES</div> <div>E. DIAGNOSIS</div> <div>F. CHARGES</div> </div> <div> <div>25. FEDERAL TAX I.D. NUMBER</div> <div>26. PATIENT'S ACCOUNT NO.</div> <div>27. ACCEPT ASSIGNMENT?</div> <div>28. TOTAL CHARGE</div> <div>29. AMOUNT PAID</div> <div>30. Rsvd for NUCC Use</div> </div> </div>									
<div style="display: flex; justify-content: space-between;"> <div> <div>31. SIGNATURE OF PHYSICIAN OR SUPPLIER</div> <div>32. SERVICE FACILITY LOCATION INFORMATION</div> </div> <div> <div>33. BILLING PROVIDER INFO & PH #</div> </div> </div>									

JA118



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BLX/LUNG <input type="checkbox"/> OTHER <input type="checkbox"/> (Medicare#) (Medicaid#) (ID#/DoD#) (Member ID#) (ID#) (ID#)												1a. INSURED'S I.D. NUMBER (For Program in Item 1) [REDACTED]																							
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J												3. PATIENT'S BIRTH DATE [REDACTED]												4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J											
5. PATIENT'S ADDRESS (No., Street) [REDACTED]												6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>												7. INSURED'S ADDRESS (No., Street) [REDACTED]											
CITY [REDACTED] STATE [REDACTED] ZIP CODE [REDACTED] TELEPHONE (Include Area Code) [REDACTED]												8. RESERVED FOR NUCC USE												CITY [REDACTED] STATE [REDACTED] ZIP CODE [REDACTED] TELEPHONE (Include Area Code) [REDACTED]											
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) a. OTHER INSURED'S POLICY OR GROUP NUMBER b. RESERVED FOR NUCC USE c. RESERVED FOR NUCC USE d. INSURANCE PLAN NAME OR PROGRAM NAME												10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) _____ c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 10d. CLAIM CODES (Designated by NUCC)												11. INSURED'S POLICY GROUP OR FECA NUMBER a. INSURED'S DATE OF BIRTH [REDACTED] M <input type="checkbox"/> F <input checked="" type="checkbox"/> b. OTHER CLAIM ID (Designated by NUCC) c. INSURANCE PLAN NAME OR PROGRAM NAME d. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, complete items 9, 9a, and 9d.											
READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM. 12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 02/26/2021																								13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file											
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL 17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON												15. OTHER DATE QUAL 17a. NPI 1659484525												16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY 18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY											
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)												20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00												22. RESUBMISSION CODE ORIGINAL REF. NO.											
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A IN3281 B LN8110 C LR102 D R339 E IN3011 F _____ G _____ H _____ I _____ J _____ K _____ L _____												ICD Ind. 0												23. PRIOR AUTHORIZATION NUMBER 49D2107215											
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) GPT/HCP/CS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OFF WORK H. PPSOT Family Plan I. ID. QUAL J. RENDERING PROVIDER ID. #												1 12 15 2020 12 15 2020 11 51798 ABCD 29 04 1 NPI 1942230040												2 12 15 2020 12 15 2020 11 81003 QW ABCD 5 00 1 NPI 1942230040											
3 12 15 2020 12 15 2020 11 82570 QW ABCD 10 00 1 NPI 1942230040												4 12 15 2020 12 15 2020 11 95972 ABCD 87 63 1 NPI 1942230040												5 12 15 2020 12 15 2020 11 99214 25 ABCD 161 24 1 NPI 1942230040											
6												25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 292 91 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use												31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 02/26/2021 DATE											
32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2331 POLO PARKWAY MIDLOTHIAN VA 231131453												33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 5875 BREMO RD SUITE 701 RICHMOND VA 232261900																							

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HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

PICA		PICA	
1. MEDICARE MEDICAID TRICARE CHAMPVA GROUP HEALTH PLAN FECA BULKING OTHER (Medicare) (X) (Medicaid) (ID#/DoD#) (Member ID#) (ID#) (ID#)		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
3. PATIENT'S BIRTH DATE SEX M F (X)		7. INSURED'S ADDRESS (No., Street)	
5. PATIENT'S ADDRESS (No., Street)		8. RESERVED FOR NUCC USE	
6. PATIENT RELATIONSHIP TO INSURED Self (X) Spouse Child Other		9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)	
10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) YES NO (X) b. AUTO ACCIDENT? PLACE (State) YES NO (X) c. OTHER ACCIDENT? YES NO (X)		11. INSURED'S POLICY GROUP OR FECA NUMBER	
10d. CLAIM CODES (Designated by NUCC)		12. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 02/26/2021	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE MM DD YY QUAL	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? \$ CHARGES YES NO 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD Ind. 0 A. I N3281 B. I R102 C. I R339 D. I N3011 E. I N813 F. L G. L H. L I. L J. L K. L L. L		22. RESUBMISSION CODE ORIGINAL REF. NO.	
23. PRIOR AUTHORIZATION NUMBER 49D2107215		24. A. DATE(S) OF SERVICE FROM TO MM DD YY MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) EPT/NCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. EXPT Family Plan I. ID QUAL J. RENDERING PROVIDER ID. #	
1 01 05 2021 01 05 2021 11 51798 A B C D 29 04 1 NPI 1942230040		2 01 05 2021 01 05 2021 11 81003 QW A B C D 5 00 1 NPI 1942230040	
3 01 05 2021 01 05 2021 11 82570 QW A B C D 10 00 1 NPI 1942230040		4 01 05 2021 01 05 2021 11 95972 A B C D 87 63 1 NPI 1942230040	
5 01 05 2021 01 05 2021 11 99214 25 A B C D 161 24 1 NPI 1942230040		6 01 05 2021 01 05 2021 11 99214 25 A B C D 161 24 1 NPI 1942230040	
25. FEDERAL TAX I.D. NUMBER SSN EIN [REDACTED] (X) (X)		26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? (For govt. claims, use back) (X) YES NO	
28. TOTAL CHARGE \$ 292 91 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use		31. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 232261900	
32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2831 POLO PARKWAY MIDLOTHIAN VA 231131453		33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 232261900	
SIGNED 02/26/2021 DATE		a. 1356571616 b. ZZ193400000X	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

<input type="checkbox"/> PICA 1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BLK LUNG <input type="checkbox"/> OTHER <input type="checkbox"/> (Medicare#) (Medicaid#) (ID#/DoD#) (Member ID#) (ID#) (ID#)		1a. INSURED'S I.D. NUMBER (For Program in Item 1) [REDACTED]	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
5. PATIENT'S ADDRESS (No., Street) [REDACTED]		7. INSURED'S ADDRESS (No., Street) [REDACTED]	
6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		8. RESERVED FOR NUCC USE	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) a. OTHER INSURED'S POLICY OR GROUP NUMBER b. RESERVED FOR NUCC USE c. RESERVED FOR NUCC USE		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> PLACE (State) c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
11. INSURED'S POLICY GROUP OR FECA NUMBER a. INSURED'S DATE OF BIRTH [REDACTED] M <input type="checkbox"/> F <input checked="" type="checkbox"/>		b. OTHER CLAIM ID (Designated by NUCC) c. INSURANCE PLAN NAME OR PROGRAM NAME	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 02/26/2021		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE QUAL MM DD YY	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DR JOSEPH, SHARON		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY. Relate A-L to service line below (24E) A. IR150 B. LR102 C. LR339 D. LR32 E. F. G. H. I. J. K. L.		22. RESUBMISSION CODE ORIGINAL REF NO. 49D2107215	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER		F. \$ CHARGES G. DAYS OR UNITS H. EXCISE FEE I. ID QUAL J. RENDERING PROVIDER ID. #	
1 01 11 2021 01 11 2021 11 51729 ABCD 513 32 1 NPI 1942230040		2 01 11 2021 01 11 2021 11 51784 59 ABCD 215 00 1 NPI 1942230040	
3 01 11 2021 01 11 2021 11 51797 ABCD 168 83 1 NPI 1942230040		4 01 11 2021 01 11 2021 11 51741 ABCD 23 87 1 NPI 1942230040	
5 01 11 2021 01 11 2021 11 91120 ABCD 637 11 1 NPI 1942230040		6 01 11 2021 01 11 2021 11 91122 ABCD 343 55 1 NPI 1942230040	
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/>		26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 02/26/2021 DATE		32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453 a. 1356571616 b. ZZ193400000X	
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 5875 BREMO RD SUITE 701 RICHMOND VA 232261900		28. TOTAL CHARGE \$ 1901 68 \$ 0 00 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

JA121



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

PICA		PICA	
1. MEDICARE (Medicare#) <input checked="" type="checkbox"/> MEDICAID (Medicaid#) <input type="checkbox"/> TRICARE (TRICARE#) <input type="checkbox"/> CHAMPVA (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN (ID#) <input type="checkbox"/> FECA-BUX LUNG (ID#) <input type="checkbox"/> OTHER (ID#) <input type="checkbox"/>		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
5. PATIENT'S ADDRESS (No., Street) CITY STATE VA ZIP CODE TELEPHONE (Include Area Code)		7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		11. INSURED'S POLICY GROUP OR FECA NUMBER	
10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 10d. CLAIM CODES (Designated by NUCC)		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file DATE 02/26/2021	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL 17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON 17a. NPI 1659484525 19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY 18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY 20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00 22. RESUBMISSION CODE ORIGINAL REF. NO. 23. PRIOR AUTHORIZATION NUMBER 49D2107215	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. IN3281 B. NB110 C. LR102 D. R339 E. IN3011 F. N393 G. I H. K. L.		24. A. DATE(S) OF SERVICE From To B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. ICD-10 I. QUAL J. RENDERING PROVIDER ID #	
1 01 12 2021 01 12 2021 11 81003 QW ABCD 5 00 1 NPI 1942230040			
2 01 12 2021 01 12 2021 11 82570 QW ABCD 10 00 1 NPI 1942230040			
3 01 12 2021 01 12 2021 11 99214 25 ABCD 161 24 1 NPI 1942230040			
4 01 12 2021 01 12 2021 11 52285 ABCD 424 49 1 NPI 1942230040			
5			
6			
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 600 73 29. AMOUNT PAID \$ 0 00 30. Rcvd for NUCC Use			
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 02/26/2021 DATE		32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453 33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 5875 BREMO RD SUITE 701 RICHMOND VA 232261900 34. 1356571616 35. ZZ193400000X	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

<div style="display: flex; justify-content: space-between;"> PICA PICA </div>											
1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BLK LING <input type="checkbox"/> OTHER <input type="checkbox"/> <small>(Medicare#) (Medicaid#) (ID#/DoD#) (Member ID#) (ID#) (ID#)</small>						1a. INSURED'S ID. NUMBER (For Program in Item 1) [REDACTED]					
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J						3. PATIENT'S BIRTH DATE <input type="checkbox"/> SEX <input checked="" type="checkbox"/> F [REDACTED]					
4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J						5. PATIENT'S ADDRESS (No., Street) [REDACTED]					
6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>						7. INSURED'S ADDRESS (No., Street) [REDACTED]					
8. RESERVED FOR NUCC USE						9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) [REDACTED]					
10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) _____ c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 10d. CLAIM CODES (Designated by NUCC)						11. INSURED'S POLICY GROUP OR FECA NUMBER [REDACTED]					
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 02/26/2021						13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file					
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL 01 27 2021						15. OTHER DATE MM DD YY QUAL [REDACTED]					
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON						18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY [REDACTED]					
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)						20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00					
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY. Relate A4. to service line below (24E) ICD 10 D A. I813 B. C. D. E. F. G. H. I. J. K. L.						22. RESUBMISSION CODE ORIGINAL REF. NO. 49D2107215					
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR LIMITS H. FOOT Family Plan I. ID QUAL J. RENDERING PROVIDER ID. #						25. FEDERAL TAX ID NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 161 24 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use					
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof) GUERETTE, NATHAN 1942230040						32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2831 POLO PARKWAY MIDLOTHIAN VA 231131453					
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE O 5875 BREMO RD SUITE 701 RICHMOND VA 232261900						34. SIGNATURE OF BILLING PROVIDER [REDACTED]					

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APPROVED OMB-0938-1187 FORM 1500 (02-12)

JA123



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

PICA		PICA	
1. MEDICARE (Medicare#) <input checked="" type="checkbox"/> MEDICAID (Medicaid#) <input type="checkbox"/> TRICARE (ID#DoDw) <input type="checkbox"/> CHAMPVA (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN (ID#) <input type="checkbox"/> FECA BLX (LUNG ID#) <input type="checkbox"/> OTHER (ID#) <input type="checkbox"/>		1a. INSURED'S ID. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
5. PATIENT'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)		7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)	
3. PATIENT'S BIRTH DATE SEX <input checked="" type="checkbox"/> F		6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>	
8. RESERVED FOR NUCC USE		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 10d. CLAIM CODES (Designated by NUCC)	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) a. OTHER INSURED'S POLICY OR GROUP NUMBER b. RESERVED FOR NUCC USE c. RESERVED FOR NUCC USE d. INSURANCE PLAN NAME OR PROGRAM NAME		11. INSURED'S POLICY GROUP OR FECA NUMBER a. INSURED'S DATE OF BIRTH SEX <input checked="" type="checkbox"/> F b. OTHER CLAIM ID (Designated by NUCC) c. INSURANCE PLAN NAME OR PROGRAM NAME d. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, complete items 9, 9a, and 9d.	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 03/25/2021		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE MM DD YY QUAL	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON 17b. NPI 1659484525		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY 18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY 20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00 22. RESUBMISSION CODE ORIGINAL REF NO. 23. PRIOR AUTHORIZATION NUMBER 49D2107215	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. I R339 B. C. D. E. F. G. H. I. J. K. L.		24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. EXIST. FARM. PH. I. ID QUAL J. RENDERING PROVIDER ID #	
25. FEDERAL TAX ID NUMBER SSN EIN <input checked="" type="checkbox"/> <input type="checkbox"/>		26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? (For govt. claims, see back) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
28. TOTAL CHARGE \$ 109 86 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use		31. BILLING PROVIDER INFO & PH# (804) 5232533	
32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453		33. BILLING PROVIDER INFO & PH# (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 2931 POLO PARKWAY MIDLOTHIAN VA 231131453	
SIGNED DATE 03/25/2021		a. 1356571616 b. 1356571616 c. ZZ19340000X	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

PICA <input type="checkbox"/>		PICA <input type="checkbox"/>	
1. MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BLK LUNG <input type="checkbox"/> OTHER <input type="checkbox"/>		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
5. PATIENT'S ADDRESS (No., Street) [REDACTED]		7. INSURED'S ADDRESS (No., Street) [REDACTED]	
6. PATIENT'S BIRTH DATE [REDACTED] SEX <input checked="" type="checkbox"/> F		8. RESERVED FOR NUCC USE	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		11. INSURED'S POLICY GROUP OR FECA NUMBER	
10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State) _____ c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		12. INSURED'S DATE OF BIRTH [REDACTED] SEX <input checked="" type="checkbox"/> F	
13. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE (I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.) SIGNED: Signature on file DATE: 03/05/2021		14. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE (I authorize payment of medical benefits to the undersigned physician or supplier for services described below.) SIGNED: Signature on file	
15. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL 02 26 2021 11		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DR. JOSEPH, SHARON		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. ICD 10: N813 B. ICD 10: N811 C. ICD 10: N3281 D. ICD 10: N393 E. ICD 10: R102 F. ICD 10: R300 G. ICD 10: L H. ICD 10: L J. ICD 10: L K. ICD 10: L L. ICD 10: L		22. RESUBMISSION CODE ORIGINAL REF. NO.	
23. PRIOR AUTHORIZATION NUMBER 49D2107215		24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS F. CHARGES G. DAYS OR UNITS H. POSIT Family Fee I. IO QUAL J. RENDERING PROVIDER ID #	
1 02 26 2021 02 26 2021 11 51798 ABCD 29 04 1 NPI 1942230040		2 02 26 2021 02 26 2021 11 82570 QW ABCD 10 00 1 NPI 1942230040	
3 02 26 2021 02 26 2021 11 81003 QW ABCD 5 00 1 NPI 1942230040		4 02 26 2021 02 26 2021 11 99024 ABCD 0 00 1 NPI 1942230040	
5		6	
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? (For gov't claims, see back) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 44 04 29. AMOUNT PAID \$ 0 00 30. Rcd for NUCC Use		31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 03/05/2021 DATE	
32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453 1356571616		33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 2931 POLO PARKWAY MIDLOTHIAN VA 231131453 1356571616 ZZ193400000X	

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APPROVED OMB-0938-1197 FORM 1500 (02-12)



HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

ANTHEM HEALTHKEEPERS PLUS
PO BOX 27401

RICHMOND VA 23279

1. MEDICARE <input type="checkbox"/> (Medicare#) <input checked="" type="checkbox"/> MEDICAID <input type="checkbox"/> (Medicaid#) <input type="checkbox"/> TRICARE <input type="checkbox"/> (ID#/DoD#) <input type="checkbox"/> CHAMPVA <input type="checkbox"/> (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> (ID#) <input type="checkbox"/> FECA <input type="checkbox"/> (ID#) <input type="checkbox"/> OTHER <input type="checkbox"/> (ID#)												10. INSURED'S I.D. NUMBER (For Program in Item 1)																																			
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J												3. PATIENT'S BIRTH DATE <input type="checkbox"/> M <input type="checkbox"/> F <input checked="" type="checkbox"/> SEX												4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J																							
5. PATIENT'S ADDRESS (No., Street) [REDACTED]												6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>												7. INSURED'S ADDRESS (No., Street) [REDACTED]																							
CITY [REDACTED] STATE [REDACTED]												8. RESERVED FOR NUCC USE												CITY [REDACTED] STATE [REDACTED]																							
ZIP CODE [REDACTED] TELEPHONE (include Area Code) [REDACTED]												9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)												10. IS PATIENT'S CONDITION RELATED TO:												11. INSURED'S POLICY GROUP OR FECA NUMBER											
a. OTHER INSURED'S POLICY OR GROUP NUMBER												a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO												a. INSURED'S DATE OF BIRTH <input type="checkbox"/> M <input type="checkbox"/> F <input checked="" type="checkbox"/> SEX												b. OTHER CLAIM ID (Designated by NUCC)											
b. RESERVED FOR NUCC USE												b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State)												b. OTHER CLAIM ID (Designated by NUCC)												c. INSURANCE PLAN NAME OR PROGRAM NAME											
c. RESERVED FOR NUCC USE												c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO												c. INSURANCE PLAN NAME OR PROGRAM NAME												d. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, complete items 9, 9a, and 9d.											
d. INSURANCE PLAN NAME OR PROGRAM NAME												10d. CLAIM CODES (Designated by NUCC)												12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 04/01/2021												13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file											
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY Q1 Q2 Q3 Q4												15. OTHER DATE MM DD YY Q1 Q2 Q3 Q4												16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY												17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DR JOSEPH, SHARON											
17a. [REDACTED]												17b. NPI 1659484525												18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY												19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)											
20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00												21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD Ind. 0												22. RESUBMISSION CODE ORIGINAL REF. NO.												23. PRIOR AUTHORIZATION NUMBER 49D2107215											
A. IN813 B. LN8110 C. LN3281 D. LN393												E. IR102 F. R300 G. L H. L												24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. ICD-9 CODE I. ID QUAL J. RENDERING PROVIDER ID, #												25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 44 04 29. AMOUNT PAID \$ 0 00 30. Rsvd for NUCC Use											
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 SIGNED 04/01/2021 DATE												32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453												33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 2931 POLO PARKWAY MIDLOTHIAN VA 231131453												a. 1356571616 b. 1356571616 c. ZZ193400000X											

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APPROVED OMB-0938-1197 FORM 1500 (02-12)



HealthKeeper (Anthem VA BCBS HMO)

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

VA

PICA		PICA	
1. MEDICARE (Medicare) <input type="checkbox"/> MEDICAID (Medicaid) <input type="checkbox"/> TRICARE (TRICARE) <input type="checkbox"/> CHAMPVA (Champion) <input type="checkbox"/> GROUP HEALTH PLAN (Group Health Plan) <input type="checkbox"/> FECA BOX LUNG (FECA Box Lung) <input checked="" type="checkbox"/> OTHER (Other) <input type="checkbox"/>		1a. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
3. PATIENT'S BIRTH DATE MM DD YY SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>		7. INSURED'S ADDRESS (No., Street) CITY STATE	
5. PATIENT'S ADDRESS (No., Street) CITY STATE		6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>	
6. RESERVED FOR NUCC USE		7. INSURED'S ADDRESS (No., Street) CITY STATE	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		11. INSURED'S POLICY GROUP OR FECA NUMBER	
11. INSURED'S POLICY GROUP OR FECA NUMBER		12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 06/16/2021	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 06/16/2021		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE MM DD YY QUAL	
16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY		17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN JOSEPH, SHARON		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY		19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. I N813 B. I N8110 C. I N3281 D. I N393 E. I R102 F. G. H. I. J. K. L.		22. RESUBMISSION CODE ORIGINAL REF. NO.	
22. RESUBMISSION CODE ORIGINAL REF. NO.		23. PRIOR AUTHORIZATION NUMBER 49D2107215	
23. PRIOR AUTHORIZATION NUMBER 49D2107215		24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. ICD-10 CODE I. ID, CHAL J. RENDERING PROVIDER ID, #	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. ICD-10 CODE I. ID, CHAL J. RENDERING PROVIDER ID, #		25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? (For gov. claims, only) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 44 04 29. AMOUNT PAID \$ 0 00 30. Payd for NUCC Use	
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> 26. PATIENT'S ACCOUNT NO. 27. ACCEPT ASSIGNMENT? (For gov. claims, only) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 28. TOTAL CHARGE \$ 44 04 29. AMOUNT PAID \$ 0 00 30. Payd for NUCC Use		31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (If certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 06/16/2021 DATE	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (If certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 06/16/2021 DATE		32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453	
32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453		33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 2931 POLO PARKWAY MIDLOTHIAN VA 231131453	
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 2931 POLO PARKWAY MIDLOTHIAN VA 231131453		34. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (If certify that the statements on the reverse apply to this bill and are made a part thereof.) 1356571616 06/16/2021 DATE	

NUCC Instruction Manual available at: www.nucc.org

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APPROVED OMB-0938-1197 FORM 1506 (02-12)

JA127



HealthKeeper (Anthem VA BCBS HMO)

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

VA

1. MEDICARE (Medicare#) <input type="checkbox"/> MEDICAID (Medicaid#) <input type="checkbox"/> TRICARE (ID#DoD#) <input type="checkbox"/> CHAMPVA (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN (ID#) <input type="checkbox"/> FECA BLK LUNG (ID#) <input checked="" type="checkbox"/> OTHER (ID#) <input type="checkbox"/>		10. INSURED'S I.D. NUMBER (For Program in Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J		4. INSURED'S NAME (Last Name, First Name, Middle Initial) ROOP, SAMANTHA J	
3. PATIENT'S BIRTH DATE MM DD YY 06 29 2021		5. INSURED'S BIRTH DATE MM DD YY 06 29 2021	
6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		7. INSURED'S ADDRESS (No., Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)	
8. RESERVED FOR NUCC USE		9. RESERVED FOR NUCC USE	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO:	
a. OTHER INSURED'S POLICY OR GROUP NUMBER		a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
b. RESERVED FOR NUCC USE		b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
c. RESERVED FOR NUCC USE		c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
d. INSURANCE PLAN NAME OR PROGRAM NAME		10d. CLAIM CODES (Designated by NUCC)	
11. INSURED'S POLICY GROUP OR FECA NUMBER			
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED Signature on file DATE 10/08/2021			
13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED Signature on file			
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY 06 29 2021		15. OTHER DATE MM DD YY 06 29 2021	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE DN GUERETTE, NATHAN		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES 0 00	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. I N813 B. I N8110 C. I N3281 D. N393 E. R339 F. G. H. I. J. K. L.		22. RESUBMISSION CODE ORIGINAL REF. NO	
23. PRIOR AUTHORIZATION NUMBER 49D2137274		24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS ON LIMITS H. EP201 Form Plan I. ID, OUI, L. RENDERING PROVIDER ID, #	
1 06 29 2021 06 29 2021 11 76857 C E 69 60 1 ZZ 207VF0040X NPI 1942230040		2 06 29 2021 06 29 2021 11 81003 QW 59 C E 5 00 1 ZZ 207VF0040X NPI 1942230040	
3 06 29 2021 06 29 2021 11 82570 QW C E 10 00 1 ZZ 207VF0040X NPI 1942230040		4 06 29 2021 06 29 2021 11 95972 C E 80 99 1 ZZ 207VF0040X NPI 1942230040	
5 06 29 2021 06 29 2021 11 99214 25 A B D 184 05 1 ZZ 207VF0040X NPI 1942230040		6	
25. FEDERAL TAX I.D. NUMBER SSN EIN <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		26. PATIENT'S ACCOUNT NO.	
27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		28. TOTAL CHARGE \$ 349 64 \$ 0 00	
29. AMOUNT PAID \$ 0 00		30. Rev'd for NUCC Use	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) GUERETTE, NATHAN 1942230040 10/08/2021 DATE		32. SERVICE FACILITY LOCATION INFORMATION POLO PARKWAY 2931 POLO PARKWAY MIDLOTHIAN VA 231131453 a. 1356571616 b. 1356571616 c. ZZ193400000X	
33. BILLING PROVIDER INFO & PH # (804) 5232533 FEMALE PELVIC MEDICINE INSTITUTE 2931 POLO PARKWAY MIDLOTHIAN VA 231131453			

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APPROVED OMB-0938-1197 FORM 1500 (02-12)

JA128

PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 1 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 01/12/20
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOP SAMANTHA JEAN 01/08/20 01/08/20

PAY TO ADDRESS: CHIPPENHAM JW HOSPITAL
 P.O. BOX 402486
 ATLANTA
 GA 303842486

BILL TO:
 ROOP SAMANTHA JEAN
 [REDACTED] SAME-DAY SURGERY FC=09
 ADMIT THRU DISCHARGE CLAIM

DATE OF SERVICE	BATCH REF	F DEPT	S PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
250-PHARMACY						
010820	08B388	0712	006594	4-GLYCOPYRROLATE 0.2MG V	488.16-	
010820	08B374	0712	006594	4 GLYCOPYRROLATE 0.2MG V	488.16	
010820	08B375	0712	008227	2 LIDO/EPI 1%/1:100M 20M	164.16	
010820	09B784	0712	008227	2-LIDO/EPI 1%/1:100M 20M	164.16-	
010820	09B771	0712	008227	1 LIDO/EPI 1%/1:100M 20M	82.08	
010820	11B358	0712	009174	1 METRONIDAZOL 500MG/100	537.84	
010820	11B358	0712	008286	1 LIDOCAINE 2% 5ML SYR I	729.00	
010820	11B358	0712	079215	1 DEXMEDET 200MCG/50ML I	1314.36	
				SUBTOTAL:	2663.28	
270-MED SURG SUPPLY						
010820	09B778	0718	469927	C1787 1 PROGRAMMER NRSTM VRF 4	8048.00	
				SUBTOTAL:	8048.00	
272-MED SURG SUPPLY/STERILE						
010820	09B778	0718	408652	1 PENCIL ESURG BOVIE 10F	204.00	
010820	09B778	0718	425545	1 DRESSING TGDPM 2.75X2I	16.00	
010820	09B778	0718	436580	1 SOLUTION IRR H2O 1L PL	159.00	
010820	09B778	0718	496771	1 KIT INTSTM SMART PROGR	27270.00	

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
 PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 2 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 01/12/20
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOP SAMANTHA JEAN 01/08/20 01/06/20

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY	SERVICE DESCRIPTION	CHARGES
010820	09B778	0718	408889		1	SUTURE VCRYL 2-0 J417H	100.00
010820	09B778	0718	408973		1	SUTURE MONCRYL 4-0 Y49	314.00
010820	09B778	0718	432394		1	ADHESIVE SKNCLS DRMBND	898.00
010820	09B778	0718	374111	C1694	1	KIT LEAD INTRO NEURO	5584.00
SUBTOTAL:							34545.00
278-MED SURG SUPPLY/IMPLANT							
010820	09B778	0717	379475	C1767	1	GENERATOR INTERSTIM 30	99999.00
010820	09B778	0717	404448	C1778	1	LEAD NRSTM 28CM 1.27X3	52807.00
SUBTOTAL:							152806.00
307-LAB/UROLOGY							
010820	08B270	0736	037032	81025	1	PREG URINE QUAL BY DOO	168.48
SUBTOTAL:							168.48
310-LAB PATHOLOGY							
010820	09B676	0732	046566	88300	1	SURG PATH LEVEL 1	190.08
SUBTOTAL:							190.08
320-RADIOLOGY DIAGNOSTIC							
010820	08B379	0728	031492	76000	1	XR FLUOROSCOPY 0-60 MI	2089.50
010820	08B379	0728	031229	72100	1	XR L-SPINE 2/3 VIEWS	1149.75
SUBTOTAL:							3239.25
360-O.R. SERVICES							
010820	09B778	0701	047728		1	BASIC OR SERVICES	4985.66
010820	09B778	0701	047734		69	OR PER MIN LEVEL 3	21434.85
010820	09B778	0701	087434	95970	1	ANALYZE NEUROSTIM NO P	594.05
SUBTOTAL:							27014.56
370-ANESTHESIA							
010820	09B778	0722	048182		69	ANESTH PER MINUTE	3437.58

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
 PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	3	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	01/12/20			
GUARANTOR NO:						
PATIENT:		RICHMOND				
ROOP SAMANTHA JEAN				ADMITTED	DISCHARGED	
				01/08/20	01/08/20	

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
010820	09B778	0722	046183		1 BASIC ANES SERVICES	4064.16
					SUBTOTAL:	7521.76
636-DRUGS/DETAIL CODE						
010820	08B388	0712	072841	J1940	1-FUROSEMIDE 20 MG INJ	91.30-
010820	08B388	0712	084373	J2704	2-PROPOFOL 200 MG INJ	1491.60-
010820	08B376	0712	084373	J2704	2 PROPOFOL 200 MG INJ	1491.60
010820	08B374	0712	072841	J1940	1 FUROSEMIDE 20 MG INJ	91.30
010820	08B280	0716	017470	J7120	1 LACTATED RINGERS 1000	686.40
010820	08B377	0712	084373X	J2704	20 PROPOFOL 200 MG INJ	745.80
010820	08B376	0712	006376X	J1580	1 GENTAMICIN UP TO 80 MG	216.70
010820	08B374	0712	077154X	J0330	1 SUCCINYLCHOL UP TO 20	19.60
010820	08B377	0712	071495X	J3010	1 FENTANYL CIT 0.1 MG IN	217.60
010820	08B374	0712	071495X	J3010	1 FENTANYL CIT 0.1 MG IN	217.60
010820	08B374	0712	071398X	J2250	2 MIDAZOLAM 2 MG INJ	198.00
010820	08B375	0712	084373X	J2704	40 PROPOFOL 200 MG INJ	1491.60
					SUBTOTAL:	3793.90
637-SELF-ADMINISTRABLE DRUG						
010820	08B388	0712	069447		1-ALBUTEROL HFA 8 GMS	4.40-
010820	08B375	0712	069447		1 ALBUTEROL HFA 8 GMS	4.40
					SUBTOTAL:	8.80
710-RECOVERY ROOM						
010820	09B778	0786	052902		60 PHASE 2 POST OP PER MI	5585.40
010820	09B778	0786	062792		1 BASIC POST OP SERVICES	2371.12

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 4 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 01/12/20
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOP SAMANTHA JEAN 01/08/20 01/08/20

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
SUBTOTAL:						7956.52
TOTAL ANCILLARY CHARGES						247946.83

DATE OF PAYMENT	BATCH REFER	PAY TYPE	PROC	INS PLAN	BILL THRU DT	DESCRIPTION / COMMENT	AMOUNT
01/08/20	12NBIL	4	999999		01/08/20	NON-BILLABLE ADJ	3,107.50
TOTAL PAYMENTS							3,107.50
TOTAL CHARGES							247946.83
PAYMENTS							.00
ADJUSTMENTS							3107.50
BALANCE							244839.33

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
 PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	5	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	01/12/20			
GUARANTOR NO:						
PATIENT:		RICHMOND	[REDACTED]	ADMITTED		DISCHARGED
ROOF SAMANTHA JEAN				01/08/20		01/08/20

DEPARTMENTAL CHARGE SUMMARY		
DEPT	DESCRIPTION	AMOUNT
0701	CMC OR	27,014.56
0712	PHARMACY	5,770.78
0716	INTRAVENOUS THERAPY	686.40
0717	JW CSS	152,806.00
0718	SUPPLIES	42,593.00
0722	ANESTHESIA	7,521.76
0728	RADIOLOGY X-RAY	3,239.25
0732	PATHOLOGY UNIT	190.08
0736	LABORATORY	168.48
0786	DAYSURGERY RECOVERY ROOM	7,956.52

REVENUE CHARGE SUMMARY				
REV CD	DESCRIPTION	BILLABLE	NON-BILLABLE	TOTAL
0250	PHARMACY	2,663.28	.00	2,663.28
0270	MED SURG SUPPLY	8,048.00	.00	8,048.00
0272	MED SURG SUPPLY/STERILE	34,545.00	.00	34,545.00
0278	MED SURG SUPPLY/IMPLANT	152,806.00	.00	152,806.00
0307	LAB/UROLOGY	168.48	.00	168.48
0310	LAB PATHOLOGY	190.08	.00	190.08
0320	RADIOLOGY DIAGNOSTIC	3,239.25	.00	3,239.25
0360	O.R. SERVICES	27,014.56	.00	27,014.56
0370	ANESTHESIA	7,521.76	.00	7,521.76
0636	DRUGS/DETAIL CODE	686.40	3,107.50	3,793.90
0710	RECOVERY ROOM	7,956.52	.00	7,956.52

PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	6	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	01/12/20			
GUARANTOR NO:						
PATIENT:		RICHMOND	[REDACTED]	ADMITTED		DISCHARGED
ROOP SAMANTHA JEAN				01/08/20		01/08/20

TOTAL CHARGES:	247,946.83
TOTAL PAYMENTS:	.00
TOTAL ADJUST:	3,107.50

PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 1 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 02/01/21
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOP SAMANTHA JEAN 01/28/21 01/28/21

PAY TO ADDRESS: CHIPPENHAM JW HOSPITAL
 P.O. BOX 402486
 ATLANTA
 GA 303842486

BILL TO:
 ROOP SAMANTHA JEAN
 [REDACTED] OUTPATIENT FC=09
 ADMIT THRU DISCHARGE CLAIM

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
402-OTHER IMAG SERVICES						
012821	28B556	0729	032944	76856	1 US PELVIC COMPLETE	2029.98
012821	28B556	0729	032943	76830	1 US TRANSVAGINAL	1457.86
SUBTOTAL:						3487.84
TOTAL ANCILLARY CHARGES						3487.84
TOTAL CHARGES						3487.84
PAYMENTS						.00
ADJUSTMENTS						.00
BALANCE						3487.84

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
 PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 2 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 02/01/21
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOP SAMANTHA JEAN 01/28/21 01/28/21

DEPARTMENTAL CHARGE SUMMARY			
DEPT	DESCRIPTION	AMOUNT	
0729	ULTRASOUND	3,487.84	

REVENUE CHARGE SUMMARY				
REV CD	DESCRIPTION	BILLABLE	NON-BILLABLE	TOTAL
0402	OTHER IMAG SERVICES	3,487.84	.00	3,487.84

TOTAL CHARGES:	3,487.84
TOTAL PAYMENTS:	.00
TOTAL ADJUST:	.00

User: BQE7613

Financial Transaction Listing

By Entry Date

04/23/2021

9:47 am

Facility: 00035 CJW Medical Center

Patient: ROOP SAMANTHA JEAN

Facility	Acct Number	Entry Date	Trans Date	ProcCode	Type	Amount	Payer	Comment
00035	35064875127	02/10/2021	02/10/2021	11221	01	\$-160.97	31550	ERA BC P 02/11/21
						ICN: 196098407100742		
00035	35064875127	02/02/2021	01/28/2021	999999	05	\$-3,326.87	31550	CONTRACTUALADJ CC
00035	35064875127	01/28/2021	01/28/2021	32944	06	\$2,029.98		US PELVIC COMPLETE
00035	35064875127	01/28/2021	01/28/2021	32943	06	\$1,457.86		US TRANSVAGINAL

Account Total: \$0.00

Facility Total for 00035 - CJW Medical Center : \$0.00

Report Total: \$0.00

- CONFIDENTIAL -

Type 01= Payment, 04= Adjustment, 05= Allowance, 06= Charge

PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 1 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 02/15/21
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOF SAMANTHA JEAN 02/10/21 02/11/21

PAY TO ADDRESS: CHIPPENHAM JW HOSPITAL
 P.O. BOX 402486
 ATLANTA
 GA 303842486

BILL TO:
 ROOF SAMANTHA JEAN
 [REDACTED] SAME-DAY SURGERY FC=09
 ADMIT THRU DISCHARGE CLAIM

DATE OF SERVICE	BATCH REF	F DEPT	S PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
250-PHARMACY						
021021	10B308	0712		005461	1 ESMOLOL 100MG/10ML VL	1140.71
021021	10B191	0712		005694	1 FAMOTIDINE 20MG/2ML VL	321.36
021021	10B187	0712		008245	1 LIDO/EPIO.5%/1:200M IN	447.34
021021	10B187	0712		076191	1 KETAMINE 50MG/1ML VL	113.01
021021	10B191	0712		114709X J3490	1 LIDOCAINE 2% 100 MG IN	54.00
021021	10B191	0712		889167X J3490	1 ROCURONIUM 10 MG INJ	45.00
SUBTOTAL:						2121.44
258-IV THERAPY						
021021	10B396	0716		003976 338012504	1 DSLRS 1000ML	852.29
021021	10B446	0716		003976 338012504	1 DSLRS 1000ML	852.29
SUBTOTAL:						1704.58
272-MED SURG SUPPLY/STERILE						
021021	11B742	0718		367466	1 SET IRRIG CYSTO STRAIG	323.00
021021	11B742	0718		408652	1 PENCIL ESURG BOVIE 10F	215.00
021021	11B742	0718		435110	1 PACKING VAG 72X2IN	452.00
021021	11B742	0718		436334	1 SOLUTION IRR H2O1L URM	311.00
021021	11B742	0718		436353	1 SOLUTION IRR 0.9% NACL	194.00

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
 PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	2	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	02/15/21			
GUARANTOR NO:						
PATIENT:		RICHMOND				
ROOP SAMANTHA JEAN					ADMITTED	DISCHARGED
					02/10/21	02/11/21

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
021021	11B742	0718	470357		1 TRAY CATH LERCTH 16FR	573.00
021021	11B742	0718	368486		1 SUTURE VCL 2 BR SH J31	109.00
021021	11B742	0718	399649		6 SUTURE CPRSYN 2-Q V20	5754.00
021021	11B742	0718	418564		6 SUTURE PDS 0 ABSRE Z33	1038.00
021021	11B742	0718	712251		2 SUTURE VCRYL 0 SH J418	226.00
					SUBTOTAL:	9195.00
278-MED SURG SUPPLY/IMPLANT						
021021	11B742	0717	477120	C1771	1 IMPLANT MID-URETHRAL S	23722.00
021021	11B742	0717	482498	C2631	1 ANCHRNG DVC SYS SACROS	8705.00
021021	11B742	0717	482545	C2631	1 IMPLANT ANCH PLVC FLR	3796.00
					SUBTOTAL:	36223.00
307-LAB/UROLOGY						
021021	10B181	0736	037032	S1025	1 PREG URINE QUAL BY DOO	181.96
					SUBTOTAL:	181.96
360-O.R. SERVICES						
021021	11B742	0701	047728		1 BASIC OR SERVICES	5449.33
021021	11B742	0701	047734		172 OR PER MIN LEVEL S	58400.88
					SUBTOTAL:	63850.21
370-ANESTHESIA						
021021	11B742	0722	048182		172 ANESTH PER MINUTE	9339.60
021021	11B742	0722	048183		1 BASIC ANES SERVICES	4451.76
					SUBTOTAL:	13791.36
636-DRUGS/DETAIL CODE						
021021	10B454	0712	067971	J2405	1-ONDANSETRON 4 MG VL	370.26-
021021	10B191	0712	067971	J2405	1 ONDANSETRON 4 MG VL	370.26

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
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PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	3	00085
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	02/15/21			
GUARANTOR NO:						
PATIENT:		RICHMOND				
ROOP SAMANTHA JEAN				ADMITTED	DISCHARGED	
				02/10/21	02/11/21	

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
021021	11B742	0717	482273	Q4152	140 DERMASURE 1SQCM	111860.00
021021	10B312	0712	079320	J1170	1 HYDROMORPH 0.5 MG INJ	82.28
021021	10B312	0712	079320	J1170	1 HYDROMORPH 0.5 MG INJ	82.28
021021	10B312	0712	079320	J1170	1 HYDROMORPH 0.5 MG INJ	82.28
021021	10B312	0712	079320	J1170	1 HYDROMORPH 0.5 MG INJ	82.28
021021	10B399	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
021021	10B444	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
021021	10B447	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
021021	11B522	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
021021	10B447	0712	067971	J2405	4 ONDANSETRON 4 MG VL	370.26
021021	11B522	0712	004908	J1200	1 DIPHENHYDRAMINE 50 MG I	238.37
021021	10B312	0712	006767	J1630	1 HALOPERIDOL LACT 5MG I	430.76
021021	10B188	0712	084373X	J2704	20 PROPOFOL 200 MG INJ	820.38
021021	10B191	0712	077154X	J0330	1 SUCCINYLCHOL UP TO 20	21.78
021021	10B191	0712	067856X	J0690	4 CEFAZOLIN 1 G VL	786.50
021021	10B191	0712	070816X	J1100	4 DEXAMETH NA PHOS 4 MG	100.43
021021	10B187	0716	017470X	J7120	1 LACTATED RINGERS 1000	755.04
021021	10B310	0712	084373X	J2704	20 PROPOFOL 200 MG INJ	820.38
021021	10B187	0712	071495X	J3010	1 FENTANYL CIT 0.1 MG IN	239.58
021021	10B187	0712	071398X	J2250	2 MIDAZOLAM 2 MG INJ	217.80

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
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PATIENT NO: [REDACTED] CHIPPENHAM JW HOSPITAL BILLING DATE PAGE 4 00035
 MED REC NO: [REDACTED] 7101 JAHNKE ROAD 02/15/21
 GUARANTOR NO:
 PATIENT: RICHMOND [REDACTED] ADMITTED DISCHARGED
 ROOP SAMANTHA JEAN 02/10/21 02/11/21

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY SERVICE DESCRIPTION	CHARGES
021021	10B187	0712	007179X	J1170	1 HYDROMORPH 2 MG INJ	173.03
021021	10B187	0712	084373X	J2704	20 PROPOFOL 200 MG INJ	820.38
021021	13B174	0716	017470X	J7120	1 LACTATED RINGERS 1000	755.04
021021	13B174	0712	077154X	J0330	5 SUCCINYLCHOL UP TO 20	108.90
021021	13B174	0712	072841X	J1940	1 FUROSEMIDE 20 MG INJ	100.43
SUBTOTAL:						119654.82
637-SELF-ADMINISTRABLE DRUG						
021021	10B187	0712	009168		1 METRONIDAZO 0.75% 70GG	1333.42
021021	10B444	0712	007725	121115430	1 LACTULOSE 10GM/15ML LI	271.04
021021	10B187	0712	067607	378647016	1 SCOPOLAMIN 1.5MG/72H P	125.84
021021	10B396	0712	007183	406324401	1 HYDROMORPHONE 4MG TAB	66.55
021021	10B446	0712	007183	406324401	1 HYDROMORPHONE 4MG TAB	66.55
021021	10B444	0712	004953	904645760	1 DOCUSATE 100MG	60.50
SUBTOTAL:						1923.90
710-RECOVERY ROOM						
021021	11B742	0704	047815		1 BASIC POST OP SERVICES	2489.68
021021	11B742	0704	047816		97 POST OP PER MINUTE	9480.78
SUBTOTAL:						11970.46
762-OBSERVATION ROOM						
021021	11B519	0604	063298	G0378	12 OBS PER HOUR	2982.24
SUBTOTAL:						2982.24
305-LAB/HEMATOLOGY						
021121	11B528	0736	037438	85018	1 HEMOGLOBIN	96.81
021121	11B528	0736	037434	85014	1 HEMATOCRIT	96.81

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PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	5	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	02/15/21			
GUARANTOR NO:						
PATIENT:		RICHMOND				
ROOP SAMANTHA JEAN				ADMITTED	DISCHARGED	
				02/10/21	02/11/21	

DATE OF	BATCH	F	NDC/CPT-4/			
SERVICE	REF	DEPT	S	PROC	HCPCS	QTY SERVICE DESCRIPTION CHARGES
						SUBTOTAL: 193.62
636-DRUGS/DETAIL CODE						
021121	11B536	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
021121	11B534	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
021121	11B523	0712	073216	J2270	1 MORPHINE SULF 2MG INJ	176.66
						SUBTOTAL: 529.98
637-SELF-ADMINISTRABLE DRUG						
021121	11B646	0712	001548	185084201	2 AMPHET/DEXAMPHT 10MG T	104.06
021121	11B523	0712	007183	406324401	1 HYDROMORPHONE 4MG TAB	66.55
021121	11B650	0712	007183	406324401	1 HYDROMORPHONE 4MG TAB	66.55
021121	11B534	0712	007183	406324401	1 HYDROMORPHONE 4MG TAB	66.55
021121	11B646	0712	017796	904506860	1 SIMETHICONE 80MG CHEW	73.81
021121	11B646	0712	004953	904645760	1 DUCUSATE 100MG	60.50
021121	11B646	0712	007725	50383077930	1 LACTULOSE 10GM/15ML LI	271.04
						SUBTOTAL: 709.06
762-OBSERVATION ROOM						
021121	12B843	0604	063298	G0378	14 OBS PER HOUR	3479.28
						SUBTOTAL: 3479.28
					TOTAL ANCILLARY CHARGES	268510.91
DATE OF	BATCH	PAY	INS	BILL		
PAYMENT	REFER	TYPE	PLAN	THRU DT	DESCRIPTION / COMMENT	AMOUNT
02/11/21	15NBIL	4	999999		02/11/21 NON-BILLABLE ADJ	5,818.67
					TOTAL PAYMENTS	5,818.67

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
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PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	6	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	02/15/21			
GUARANTOR NO:						
PATIENT:		RICHMOND	[REDACTED]	ADMITTED		DISCHARGED
ROOP SAMANTHA JEAN				02/10/21		02/11/21

TOTAL CHARGES	268510.91
PAYMENTS	.00
ADJUSTMENTS	5818.67
BALANCE	262692.24

INSURANCE BENEFITS ASSIGNED TO CJW MEDICAL CENTER.
PLEASE RETAIN FOR YOUR RECORDS.

PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	7	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	02/15/21			
GUARANTOR NO:						
PATIENT:		RICHMOND	[REDACTED]	ADMITTED		DISCHARGED
ROOP SAMANTHA JEAN				02/10/21		02/11/21

DEPARTMENTAL CHARGE SUMMARY		
DEPT	DESCRIPTION	AMOUNT
0604	NURSING UNT-HOSP DEFINED	6,461.52
0701	CMC OR	63,850.21
0704	CMC PACU	11,970.46
0712	PHARMACY	11,569.12
0716	INTRAVENOUS THERAPY	3,214.66
0717	JW CSS	148,083.00
0718	SUPPLIES	9,195.00
0722	ANESTHESIA	13,791.36
0736	LABORATORY	375.58

REVENUE CHARGE SUMMARY				
REV CD	DESCRIPTION	BILLABLE	NON-BILLABLE	TOTAL
0250	PHARMACY	2,022.44	99.00	2,121.44
0258	IV THERAPY	1,704.58	.00	1,704.58
0272	MED SURG SUPPLY/STERILE	9,195.00	.00	9,195.00
0278	MED SURG SUPPLY/IMPLANT	36,223.00	.00	36,223.00
0305	LAB/HEMATOLOGY	193.62	.00	193.62
0307	LAB/UROLOGY	181.96	.00	181.96
0360	O.R. SERVICES	63,850.21	.00	63,850.21
0370	ANESTHESIA	13,791.36	.00	13,791.36
0636	DRUGS/DETAIL CODE	114,465.13	5,719.67	120,184.80
0637	SELF-ADMINISTRABLE DRUG	2,632.96	.00	2,632.96
0710	RECOVERY ROOM	11,970.46	.00	11,970.46
0762	OBSERVATION ROOM	6,461.52	.00	6,461.52

PATIENT NO:	[REDACTED]	CHIPPENHAM JW HOSPITAL	BILLING DATE	PAGE	8	00035
MED REC NO:	[REDACTED]	7101 JAHNKE ROAD	02/15/21			
GUARANTOR NO:						
PATIENT:		RICHMOND	[REDACTED]	ADMITTED		DISCHARGED
ROOP SAMANTHA JEAN				02/10/21		02/11/21

TOTAL CHARGES:	268,510.91
TOTAL PAYMENTS:	.00
TOTAL ADJUST:	5,818.67

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,

Plaintiff,

v.

Case No.: 3:21-CV-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

**MEMORANDUM OF FACT AND LAW IN OPPOSITION OF DEFENDANT'S MOTION
IN LIMINE TO EXCLUDE DR. GURETTE FROM TESTIFYING AT TRAIL, TO
EXCLUDE PLAINTIFF'S MEDICAL BILLS FOR DR. GUERETTE'S TREATMENT,
AND TO EXCLUDE ANY MENTION OF ANY MENTION OF ANY CONDITION
TREATED BY DR. GUERETTE**

COMES NOW the Plaintiff, Samantha Roop, and proffers this Memorandum of Fact and Law in Opposition of Defendant's Motion in Limine and accompanying Memorandum in Support of the same and in support thereof states:

FACTUAL BACKGROUND

Plaintiff affirms the first two paragraphs of Defendant's recitation of the facts of this case. Particularly that treating physicians did not have to provide a written report.

Plaintiff returned to Dr. Guerette's care after the July 7, 2019 motor vehicle accident that is the basis for this instant matter. Her first scheduled appointment after said accident was on or about October 8, 2019. Prior to 2019, Samantha Roop has previously seen and was treated by Dr. Guerette for bladder issues. *See*, Guerette Depo 4:21-5:8 (Feb. 8, 2022). A copy of Dr. Guerette's Deposition is attached hereto as Exhibit A. Plaintiff will further affirm Defendant's recitation of the facts that Ms. Roop had several appointments with Dr. Guerette from October 2019 through June 2021 for pelvic prolapse issues as well as bladder concerns. *See*, Guerette Memorandum of

Fact, generally (April 7, 2022). Said Memorandum of Fact is attached as Exhibit B. The Plaintiff will concede the bills, as presented by Defendant, speak for themselves regarding dates and services rendered as well as that Dr. Guerette's treatment of the Plaintiff in 2019 to 2021 treating to the bladder and prolapse issues required several procedures.

On February 8, 2022 Dr. Guerette was deposed by both parties. During this deposition, when asked about his opinion regarding whether or not his treatment from October of 2019 to present was causally related to the automobile accident in July 2019 his consistent answer was that he could not say that with a, "high degree of medical probability." *See*, Guerette Depo 30:21, 31:9 (Feb. 8, 2022). Dr. Guerette points out during his deposition that a prolapse is a high force traumatic event as well that is not likely to be caused by falling off a horse and being dragged. *See*, Guerette Depo 30:1, 31:3 (Feb. 8, 2022). Furthermore, Dr. Guerette states that traumatic accidents can break the Interstim device Dr. Guerette has previously used to treat Ms. Roop. *See*, Guerette Depo 30:20-25 (Feb. 8, 2022). Roop herself temporally related the worsening of her bladder issues to the July 7, 2019 accident. *See*, Guerette Depo 8:5-9 (Feb. 8, 2022). Absent from the deposition is the clarification, by either party, as to what Guerette meant by "high degree".

Plaintiff concedes that there are no expert designated by either party in the instant matter. Furthermore, there has been no motion or filing submitted by Plaintiff to the Court amending the claims for Plaintiff's bladder and pelvic prolapse injuries that were stated in both the Complaint and throughout Plaintiff's Discovery responses. To the contrary, Plaintiff specifically stated her pelvic and bladder injuries as specific injuries she sustained in the accident, timely named Dr. Guerette as a treating physician for said injuries, properly disclosed the name of Dr. Guerette's practice as a facility where she received services, and appropriately provided Defendant with Dr. Guerette's bills and records. *See*, Pls. Ans. To Int. 4, 5, 7, 8, and 16. Attached as Exhibit C.

Dr. Guerette's Intimate Wellness Institute, and its physicians, was also previously disclosed timely as required by Rule 26(a)(1)(A) on November 15, 2021. *See*, Plaintiff's Initial Rule 26(a)(1)(A) Disclosures, 1(j)(viii) (November 15, 2021). The Rule 26(a)(1)(A) Disclosure is attached as Exhibit D.

On April 7, 2022 Dr. Guerette endorsed a Memorandum of Fact based observations made in the normal course of duty in his treatment of Plaintiff. Dr. Guerette states that Ms. Roop did not have any visits with him from 2013 to 2019. *See*, Guerette Memorandum of Fact, 4 (April 7, 2022). Dr. Guerette states that he had an appointment with Ms. Roop in October 2019 regarding the worsening of urinary incontinence that Plaintiff temporally related to the motor vehicle accident in July 2019. *See*, Guerette Memorandum of Fact, 5 (April 7, 2022). He further states that upon examination due to Plaintiff's concerns in October 2019, he determined Plaintiff had some loss of support of the anterior vaginal wall and pelvic organ prolapse which were noted changes since her prior treatment in 2011 and 2012. *See*, Guerette Memorandum of Fact, 7 (April 7, 2022). Dr. Guerette observed that the Interstim bladder device previously implanted to regulate Ms. Roop's bladder had malfunctioned and said malfunction was present in the unit's programming upon his examination of the device. The unit's malfunctioning was consistent with physical damage and said programming indicated the malfunction began to occur on July 7, 2019. *See*, Guerette Memorandum of Fact, 11 (April 7, 2022). Dr. Guerette indicates that there was no evidence of other significant risk factor present during his observation and treatment of Ms. Roop that could cause damage to the Interstim, the bladder issues, or the prolapse aside from the July 7, 2019 motor vehicle accident. *See*, Guerette Memorandum of Fact, 13, 28 (April 7, 2022). Moreover, Dr. Guerette certifies that he can state it is more likely than not that the car accident between the Defendant and Plaintiff on July 7, 2019 caused Ms. Roop's Interstim to malfunction

as well as the prolapses and pelvic floor dysfunction. *See*, Guerette Memorandum of Fact, 29 (April 7, 2022).

Furthermore, Dr. Guerette certifies that he is a business records custodian of any of his records regarding the bills or treatment of Ms. Roop, that said records were reasonable and necessary, and that the proper foundation is present for said records to be entered into evidence. *See*, Guerette Memorandum of Fact, 30 (April 7, 2022).

Plaintiff's Counsel contacted Defendant's Counsel to inform him of Dr. Guerette's Memorandum of Fact requesting that he, based thereon, withdraw his Motion in Limine. Defendant's Counsel declined.

Plaintiff certifies that she has made a good faith effort to resolve this dispute prior to filing this Motion.

DISCUSSION OF LAW AND ARGUMENT

- 1. Dr. Guertte should be permitted to testify as a fact witness as Plaintiff timely disclosed him and his practice, the Intimate Wellness Institute, as a treating physician regarding injuries Plaintiff incurred as a result of the July 7, 2019 accident with Defendant.**

Plaintiff timely and properly disclosed Dr. Guerette as an actively treating physician, his practice, and provided his bills and records as required to Defendant in discovery pursuant to Rule 37(c)(1) as well as Rule (2)(a) and (e). Said disclosures were initially made in December of 2021. Furthermore, Dr. Guerette's Intimate Wellness Institute was properly disclosed in Defendant, as stated above, has already deposed Dr. Guerette on February 8, 2022. All of these occurrences took place prior to the close of discovery on March 23, 2022. It is well established by Federal Courts that treating physicians can be called as fact witnesses as long as they only provide testimony as to, "their individual observations and treatment . . . (and) will be permitted to testify to their observations, course of treatment, and diagnosis," at the time the patient was

treated. Springs v. Waffle House, Inc., Civil Action No. 3:18-cv-03516-JMC, 2021 U.S. Dist. LEXIS 6031, at *8 (D.S.C. Jan. 13, 2021). The Court's decision in the aforementioned case is consistent with prior treatment of similar issues in this district prohibiting the testimony of treating physicians but prohibiting specific testimony by the same only as to expert opinion which consists of prognosis and future medical needs. *Id.* This District has held that, "a person with specialized training does not testify as an expert by giving first-hand participant testimony, even though it appears to be expert testimony." Quoting, *Gomez v. Rivera Rodriguez*, 344 F.3d 103, 113 (1st Cir. 2003). Additionally, as stated by the court in *Gomez*, 344 F.3d at 113-114, and quoted by *Indem*, "a party need not identify a witness as an expert so long as the witness played a personal role in the unfolding of the events at issue and the anticipated questioning seeks only to elicit the witness's knowledge of those events." Indem. Ins. Co. of N. Am. v. Am. Eurocopter LLC, 227 F.R.D. 421, 424 (M.D.N.C. 2005). In the instant matter Dr. Guerette is a treating physician who can qualify as an expert but will not be doing so as he is a treating physician of Ms. Roop with firsthand participant knowledge who played a personal role in the diagnosis and treatment of Ms. Roop and will only be asked the same.

The same Indem goes on to quote that *Fed. R. Civ. P. 26*, "focuses on the substance of the testimony which is offered as opposed to the status of the witness." *Id.* Dr. Guerette will only be asked about his firsthand knowledge regarding Ms. Roop, her treatment by him, and his diagnosis of her at the time of treating making him squarely a fact witness and his testimony relevant and admissible without the need for a Rule 26 expert disclosure. More cases in this District have upheld the same stating that, "the nature of a witness's testimony, [*2] and the source of the facts on which it is based, determines the disclosure requirements. To the extent

that a treating physician's testimony is based on facts learned or "observations made in the normal course of duty," the treating physician is a fact witness and need not submit an expert report.” Barnes v. Costco Wholesale Corp., No. JKB-18-3377, 2019 U.S. Dist. LEXIS 134225, at *2 (D. Md. Apr. 18, 2019). The same case goes on to further distinguish that, “a treating physician is required to submit at least an abbreviated expert report . . . if he or she offers opinion testimony or testif[ies] as to scientific, technical, or specialized information,” per Rule 26(a)(2)(c) as such opinion testimony makes them a hybrid/fact witness. *Id.* Dr. Guerette will not offer any opinion testimony that would require him to be disclosed as an expert hybrid/fact witness under Rule 26(a)(2)(c).

Defendant cites a Seventh Circuit case in support of his argument, *Cripe v. Henkle*. This decision is not controlling given the aforementioned case law out of the appropriate district, the Fourth, which clearly states that treating physicians can testify as fact witnesses with no report or disclosure required under Rule 26(2)(a) or (c). Given that Plaintiff has properly and timely disclosed Dr. Guerette as a fact witness he must be permitted to testify as to his actual treatment, observations, and diagnosis of Ms. Roop at the time of treatment as said testimony is incredibly relevant to the issues of the instant matter.

2. The medical bills for Dr. Guertte’s treatment should be admissible because an expert is not required to opine to causation regarding injuries that arose from a motor vehicle accident

Plaintiff agrees with Defendant that since the Court has this case as a matter of diversity jurisdiction, the Court must apply Virginia substantive law. Furthermore, the Plaintiff further agrees that the Court’s decision depends on the evidence and types of damages permitted in personal injury cases under Virginia substantive law.

Here the Defendant seeks to exclude Dr. Guerette's medical bills and treatment due to a lack of expert opinion regarding causation. Defendant's reliance on *McMunn v. Tatum* is misplaced. *McMunn* is a medical malpractice case. The *Code of Virginia* §8.01-20.1, the *Code* Section directly on point with the *McMunn* case and its ruling arising subsequently thereto, requires an expert witness for only medical malpractice cases. The case clarifies that, "whether a particular treatment is medically necessary and whether it was causally related to a condition resulting from some act or omission on the Defendant's part can usually be determined only by a medical expert," when referring to medical malpractice cases due to the requirement to establish the defendant deviated from the applicable standard of care and that deviation was the proximate cause of the plaintiff's injuries. *McMunn v. Tatum*, 237 Va. 558, 560, 379 S.E.2d 908, 909 (1989); *Summers v. Syptak*, 293 Va. 606, 608, 801 S.E.2d 422, 423 (2017); Va. Code Ann. § 8.01-20.1.

This Circuit has acknowledged that, "Virginia tort law does not mandate expert testimony to show proof of causation." *McCauley v. Purdue Pharma L.P.*, 331 F. Supp. 2d 449, 450 (W.D. Va. 2004). The Virginia Supreme Court has made it clear, particularly regarding motor vehicle accident and the injuries incurred as a result thereof, that not only is expert testimony not required to demonstrate causation, "direct medical evidence to establish a causal connection between an accident and injury is ***not*** a prerequisite to discovery. Here the testimony of the plaintiff alone, with all reasonable inferences which could be drawn therefrom, coupled with the medical evidence offered, was sufficient to present a Jury issue as to causation. *Sumner v. Smith*, 220 Va. 222, 223, 257 S.E.2d 825, 825 (1979). In the instant matter Plaintiff is going beyond her own testimony regarding her injuries and their timing and presenting her treating physician as a fact witness to testify as to his treatment, observations, and diagnosis. The Virginia Supreme Court has established that lay testimony is admissible on the question of causation

regarding injuries sustained in motor vehicle accident. *Summers*, 293 Va. 606, 614, 801 S.E.2d 422, 426 (2017). Lay testimony of causal connection between an automobile accident and injury is admissible for whatever weight the fact finder may choose to give it, even when medical testimony fails to establish causal connection expressly. *Todt v. Shaw*, 223 Va. 123, 124, 286 S.E.2d 211, 212 (1982).

This Virginia Supreme Court cases support the Plaintiff's argument and are directly on point. Plaintiff and her treating physician, both non-expert fact witnesses, can testify as to causation of her injuries that arose out of a motor vehicle accident with Defendant. Additionally, Roop's daughter and significant other, also timely and appropriately disclosed as required, will offer further lay witness testimony as to the causal relationship between Roop's injuries and the July 7, 2019 accident.

The bills themselves are business record affidavits that are admissible if the proper foundation is laid. Dr. Guerette certified that he is a records custodian of his own bills and records and further certified the requisite conditions for said bills and records to be admissible over typical hearsay exclusions. The Defendant's own proffered case *McMunn v. Tatum* states that question of authenticity as to medical bills and records is subject to verification from lay sources such as the Plaintiff. *McMunn v. Tatum*, 237 Va. 558, 569, 379 S.E.2d 908, 914 (1989). Courts in Virginia, "expressly permit[s] the introduction of certain portions of medical records under the business records exception to its hearsay rule. *Parker v. Commonwealth*, 41 Va. App. 643, 646, 587 S.E.2d 749, 750 (2003). Virginia Courts, including the Supreme Court, have adopted the modern Shopbook Rule allowing the admission of medical records, particularly those arising from a motor vehicle accident, "where a proper foundation is laid and the need to do so, as an exception to the hearsay rule, is apparent." *Dalton*

v. Johnson, 204 Va. 102, 103, 129 S.E.2d 647, 648 (1963). The same case goes even further to state that the admissions of the records does not require proof of the original observers or record keepers. *Id.* Here Dr. Guerette created some if not most of the records and bills that will be introduced using his testimony as a foundation. He is the original observer and record keeper for the majority of the records to be introduced. This in conjunction with the fact-based testimony he will give makes it clear he is not only a business record custodian but the actual person who created said bills and records. Bills and records that will demonstrate a clear need to be admitted based on his testimony in conjunction with the other witnesses Plaintiff will produce that give lay testimony as to causation of Plaintiff's injuries, namely the car accident on July 7, 2019.

Plaintiff does point out to the Court, and will abide by the same, that this business record exception for medical records does not include the admission of the opinions of physicians. Plaintiff would not seek to enter any opinion testimony, whether through oral evidence or business records, as such is within the purview of an expert and there is not an expert to testify on Plaintiff's behalf. Arnold v. Wallace, 283 Va. 709, 711, 725 S.E.2d 539, 540 (2012).

As an aside but as a relevant contention that may arise given the admission of the medical bills, the Supreme Court of Virginia has held that medical bills received by an injured party are *prima facie* evidence that the charges were reasonable and necessary. *See Walters v. Littleton*, 223 Va. 446, 290 S.E.2d 839 (1982). *See also Nationwide Mutual Ins. Co. v. Jewel Tea Co.*, 202 Va.527, 118 S.E.2d 646 (1961). Bogle Dev. Co. v. Buie, 19 Va. App. 370, 375, 451 S.E.2d 682, 685 (1994).

3. The medical bills for Dr. Guertte's treatment are relevant and admissible and therefore should be permitted to be entered into evidence

Dr. Guerette's bills and records, as proffered by Dr. Guerette qualifying as a business records custodian for the same, are admissible and should be permitted to be entered into evidence are they are completely relevant to a significant fact at issue. "Court have defined as relevant every fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue." McMunn v. Tatum, 237 Va. 558, 560, 379 S.E.2d 908, 909 (1989). The bills and records of Dr. Guerette are relevant regarding the issue of whether or not Plaintiff's injuries were caused by the motor vehicle between the Plaintiff and Defendant that is the basis of the instant matter taking place on July 7, 2019. The bills and records help establish the probability or improbability of those injuries being caused by the July 7th accident. As explicated herein, supra, an expert is not required to opine as to causation of the injuries. In the instate matter, a doctor will testify as to the Plaintiff's injuries and his treatment, diagnosis, and observations of the same. The records and bills clearly make the issue, and the facts related thereto, of whether or not the accident caused Roop's injuries more or less probable, completely relevant, and their probative value is clear without confusing any issues comporting with Rules 401, 402, and 403. Dr. Guerette stated in his Memorandum of fact that there were no other additional significant risk factors present that can cause the injuries the Plaintiff complained of after the July 2019 accident, that Roop temporally related the worsening bladder issues to the July 7th accident during his treatment of her, and that the Interstim programming demonstrated a malfunction consistent with physical damage on the date of the accident. All incredibly relevant facts for the trier of fact, the jury, to draw inferences from as to the causation of Roop's injuries.

CONCLUSION

WHEREFORE, for the foregoing reasons mentioned above, the Plaintiff, by Counsel, respectfully requests that the Court permit Dr. Guerette to testify as a fact witness to his direct observations, treatment, and diagnosis of Plaintiff as well as admit his bills and records which are undoubtedly relevant and admissible and clearly defined exceptions to the Hearsay Rule.

SAMANTHA ROOP

By Counsel

/s/

Samantha Cohn (VSB# 89081)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
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Phone: (804) 888-8888
Facsimile: (804) 359-5426
Email: scohn@mcdonaldinjurylaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of April, 2022, I electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Carter T. Keeney, Esq. (VSB # 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Phone: (804) 747-7470
Facsimile: (804) 747-7977
Email: ckeene@carterandshands.com
Counsel for Defendant

/s/

Samantha Cohn, Esquire

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,

Plaintiff,

v.

Case No.: 3:21-CV-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

MEMORANDUM OF FACT

COMES NOW the Plaintiff, Samantha Roop, and proffers this Memorandum of Fact endorsed by Dr. Nathan Guerrette who will give factual testimony as to his actual treatment of the intimate pelvic injuries the Plaintiff complained of and exhibited subsequent to the motor vehicle accident that is the basis for this instant matter. Namely, that Dr. Guerrette will testify in a manner consistent with the Plaintiff's requisite burden of proof that his treatment of the Plaintiff's complaints was necessary, reasonable, and relevant to the instant matter. In support thereof, Dr. Guerrette states:

1. Plaintiff Ms. Roop first came under Dr. Guerrette's care in early 2011 for incontinence, overactive bladder, pelvic floor muscle dysfunction, and bladder pain.
2. Dr. Guerrette is a board-certified Urogynecologist as well as holding board-certifications in Female Pelvic Medicine, Reconstructive Surgery, Obstetrics, and Gynecology.
3. During his course of treatment, in or about 2012 or 2013, Dr. Guerrette implanted a sacral nerve stimulator to simulate the third sacral nerve root that stimulates the bladder when alternative treatments are unsuccessful.

4. Dr. Guerette did not see the Plaintiff between 2013 and October of 2019 and was not aware of any new complaints by Plaintiff requiring his treatments or services.

5. Plaintiff had an appointment with Dr. Guerette on or about October 8, 2019 at which time she complained of a worsening of urinary incontinence that Plaintiff temporally related to a motor vehicle accident that occurred on or about July 7, 2019.

6. On the October 8, 2019 visit Plaintiff complained of mixed incontinence symptoms that were not present prior to the July 7, 2019 motor vehicle accident she was involved in.

7. Upon examination and assessment Dr. Guerette also determined Plaintiff with some loss of support of the anterior vaginal wall, cystocele, pelvic pain, and pelvic organ prolapse which were noted as changes in her symptoms since her last visit.

8. Plaintiff had further follow up appointments in early December 2019 with Dr. Guerette and his staff at which time she was diagnosed with a worsening overactive bladder since her last evaluation after a urodynamic evaluation and cystoscopy. The previous assessment of urinary retention and cystocele were confirmed as well as a diagnosis of dyssynergic voiding.

9. Dr. Guerette noted the Interstim, the sacral nerve stimulator, was not functioning properly, so because of that and in conjunction with the diagnosis, it was determined the Interstim battery needed to be replaced and pelvic floor therapy initiated.

10. The Interstim has a general "shelf-life" of five years at which time the unit ceases working meaning there is no ability to read the unit's programming as the unit has died due to lack of battery life.

11. In Ms. Roop's case, the Interstim malfunctioned as it ceased to work properly but continued to operate which allowed Dr. Guerette to read its programming. The programming indicated a malfunction of the unit consistent with physical damage on July 7, 2019.

12. Dr. Guerette will testify that the force caused by a car accident can cause an Interstim to malfunction.

13. Dr. Guerette will testify that there are other factors that can cause an Interstim to malfunction but none of those other factors were indicated or uncovered during the course of his treatment of Ms. Roop.

14. The Interstim battery and leads were replaced by Dr. Guerette in January 2020 which did relieve some of the overactive bladder symptoms for a short period of time however the prolapse was still a persistent complaint.

15. In February 2020 the Plaintiff once again returned to Dr. Guerette's office for complaints of urgency and frequency resulting in a reprogramming of the Interstim as well as discomfort from the prolapse.

16. Plaintiff continued seeking the treatment of Dr. Guerette throughout 2020 and in December complained that her voids had drastically increased in frequency, eleven times a day and more than four times at night, as well as pain with sex and a worsening of her interstitial cystitis symptoms. The interstitial cystitis was initially diagnosis in early 2020.

17. The Interstim was once again reprogrammed and examined by a technician from Medtronic, the company that makes the unit.

18. In January 2021 Plaintiff was once again seen by Guerette for continued pain during sex, ongoing interstitial cystitis, worsening bladder pain, excess void frequency, and the bladder prolapse was noted to have increased from stage 2 upon initial diagnosis in 2019 to a stage three at this appointment.

19. During several January 2021 visits to Guerette and his staff by the Plaintiff, the decision was made to fix the prolapse surgically in order to attempt to alleviate the prolapse and ease and/or lessen the pain Plaintiff was experiencing. The procedure was a vaginal vault suspension.

20. The procedure was conducted on or about February 10, 2021 at which time Plaintiff was diagnosed with a uterine prolapse, a vaginal vault prolapse, a vaginal prolapse, and stress urinary incontinence.

21. Follow up appointment were attended by Plaintiff with Guerette and staff in February 2021 at which time voiding had returned to normal and in March of 2021 Plaintiff's prolapse was determined to have been corrected.

22. In May 2021 Plaintiff again returned to Guerette for a follow up and had continued complaints of pain associated with sexual activity and bladder tenderness due to interstitial cystitis.

23. At another appointment in June of 2021 Plaintiff had reoccurring complaints of pain with sex and bladder pain resulting in another reprogramming of the Interstim.

24. In 2019 Plaintiff presented to Guerette with an exacerbation of some chronic issues related to her bladder and new complaints of prolapse and pelvic floor dysfunction.

25. Plaintiff related these exacerbations of former complaints and the appearance of the new complaints in 2019 to the motor vehicle accident that occurred between Plaintiff and Defendant on July 7, 2019.

26. Dr. Guerette will testify that traumatic force, such as force caused by a car accident, can cause a loss of support in the pelvis leading to prolapse and pelvic floor dysfunction.

27. Dr. Guerette will testify that there are other factors besides traumatic force that can cause prolapse.

28. During Dr. Guerette's treatment of Ms. Roop in 2019 to present, whether through her statements made for medical treatment or his own observations during said treatment, there were no additional significant risk factors that could caused the prolapses or pelvic floor dysfunction aside from the car accident that is the basis of this matter which took place on July 7, 2019.

29. While Dr. Guerette will not be asked by Plaintiff to opine as he is solely a fact witness, Dr. Guerette can state that it is more likely than not that the car accident that occurred between the Plaintiff and Defendant on July 7, 2019 caused Ms. Roop's Interstim to malfunction as well as the pelvic prolapses and pelvic floor dysfunction.

30. Any records relied on and/or provided by Dr. Guerette to be entered into evidence are reasonable and necessary. Dr. Guerette is a business custodian of said records and will testify that said records were made at or near the time of the occurrence of the matters set forth therein, by or from information transmitted by a person with knowledge of those matters, were kept in the course of regularly conducted business activity, and were made by this business as a regular practice.

I, Dr. Nathan Guerette, having duly read the above statements, certify that the contents of this memorandum are true and accurate. I certify that said facts as contained above were observed by me during my actual treatment of Plaintiff Samantha Roop and that none of the above statements or conclusions are based on medical records provided by other providers or treatments that were not performed by me. I declare under penalty of perjury that the foregoing is true and correct.



Dr. Nathan Guerette

Intimate Wellness Institute

Samantha Cohn

From: Office Manager <office.manager@iwiva.com>
Sent: Thursday, April 7, 2022 5:29 PM
To: Samantha Cohn
Subject: Re: URGENT - PLEASE FORWARD TO DR> GUERETTE IMMEDIATELY
Attachments: SKM_300i22040717250.pdf

He signed!

Kae Snyder, Practice Manager
Nathan L. Guerette, MD
Jennifer Reilly, NP
The Intimate Wellness Institute of Virginia
2931 Polo Parkway
Midlothian, VA 23113
P) 804-523-2533 ext. 305
F) 804-523-2534

On Thu, Apr 7, 2022 at 5:19 PM Samantha Cohn <SCohn@mcdonaldinjurylaw.com> wrote:

Let's try this one

From: Office Manager <office.manager@iwiva.com>
Sent: Thursday, April 7, 2022 5:13 PM
To: Samantha Cohn <SCohn@mcdonaldinjurylaw.com>
Subject: Re: URGENT - PLEASE FORWARD TO DR> GUERETTE IMMEDIATELY

Here is another one.

Kae Snyder, Practice Manager
Nathan L. Guerette, MD
Jennifer Reilly, NP
The Intimate Wellness Institute of Virginia
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F) 804-523-2534

On Thu, Apr 7, 2022 at 5:03 PM Samantha Cohn <SCohn@mcdonaldinjurylaw.com> wrote:

Awesome. You're best.

From: Office Manager <office.manager@iwiva.com>

Sent: Thursday, April 7, 2022 5:02 PM

To: Samantha Cohn <SCohn@mcdonaldinjurylaw.com>

Subject: Re: URGENT - PLEASE FORWARD TO DR> GUERETTE IMMEDIATELY

I will get this to him now.

Kae Snyder, Practice Manager

Nathan L. Guerette, MD

Jennifer Reilly, NP

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F) 804-523-2534

On Thu, Apr 7, 2022 at 4:52 PM Samantha Cohn <SCohn@mcdonaldinjurylaw.com> wrote:

Thank you! I corrected paragraph eleven with the inserted words, thank you doctor for clarifying. I need something similar to the language in paragraph 28 stating that while there are other factors that can cause the injuries, there were no indicated or observed during his treatment. I tweaked it a little but I have sent a word doc if he wants to further correct.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,

Plaintiff,

v.

Civil Action No.: 3:21-cv-00675-DJN

NICHOLAS JAMES DESOUSA,

Defendant.

PLAINTIFF'S INITIAL RULE 26(a)(1)(A) DISCLOSURES

Plaintiff, Samantha Roop, by counsel, hereby makes the following initial disclosures in accordance with Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure:

1. Individuals who are likely to have discoverable information:

- a. The Defendant, Nicholas James Desousa. Upon information and belief, the Defendant resides at 3113 Blue Herron Drive S, Chesapeake Beach, Maryland 20732.
- b. Samantha Roop, plaintiff, may be contacted through counsel. Ms. Roop has knowledge of the incident, her pre-incident life, and her post-incident life and difficulties. Plaintiff resides at 2291 Mill Road, Powhatan, Virginia 23139.
- c. Gerard Barton, Plaintiff's husband. Mr. Barton has knowledge of Plaintiff's pre-incident life and her post-incident life and difficulties. He is aware of the incident through the Plaintiff and their children who were passengers in the vehicle at the time of the incident. Mr. Barton resides at 2291 Mill Road, Powhatan, Virginia 23139.

d. Kelsey Hendershot, minor, was a passenger in Plaintiff's vehicle at the time of the incident and has knowledge of the incident and Plaintiff's post-incident life and difficulties. Miss Hendershot resides at 2291 Mill Road, Powhatan, Virginia 23139.

e. Kendra Barton, minor, was a passenger in Plaintiff's vehicle at the time of the incident and has knowledge of the incident and Plaintiff's post-incident life and difficulties. Miss Barton resides at 2291 Mill Road, Powhatan, Virginia 23139.

f. John Barton, minor, was a passenger in Plaintiff's vehicle at the time of the incident and has knowledge of the incident and Plaintiff's post-incident life and difficulties. Mr. Barton resides at 2291 Mill Road, Powhatan, Virginia 23139.

g. Jim Miller, a witness to the incident. Mr. Miller has knowledge of the incident.

h. Trooper Adam N. Cavins. Trooper Cavins investigated the incident and has knowledge thereof. Trooper Cavins also prepared the crash report associated with the incident.

i. Plaintiff's family, friends, and co-workers, to be specifically identified in discovery, who may have knowledge of Plaintiff's pre-incident life and post-incident life and difficulties.

j. Plaintiff's treating physicians, healthcare professionals, and employees of healthcare facilities, specifically:

- i. St. Francis Watkins Center
- ii. Richmond Emergency Physicians

- iii. Emergency Coverage Corporation
 - iv. Commonwealth Radiology
 - v. Powhatan Medical Associates
 - vi. Chippenham & Johnston Willis Hospital
 - vii. Alliance Physical Therapy
 - viii. Intimate Wellness Institute of Virginia
 - ix. Bon Secours Neurology Clinic
 - x. Tuckahoe Orthopedics
 - xi. OrthoVirginia
- k. Plaintiff's prior treating physicians, healthcare professionals, and employees of healthcare facilities who have knowledge of Plaintiff's pre-incident state of health, specifically:
- i. All previous disclosed medical providers in section 1(j) above.
 - l. Any other individual identified in Defendant's Rule 26(a)(1) Disclosure.

2. Documents and things:

- a. The following categories of documents are in the possession of plaintiff and may be used to support plaintiff's claim:
- i. Crash Report prepared by Trooper Cavins, attached hereto.
 - ii. Field notes taken by Trooper Cavins, attached hereto.
 - iii. Statements from Plaintiff and Defendant taken as part of Trooper Cavins' investigation, attached hereto.

- iv. Video recording containing in-car video of the incident scene, attached hereto.
- v. Audio recordings received from Plaintiff's FOIA request, attached hereto.
- vi. Photographs of the vehicles involved in the incident, attached hereto.
- vii. Plaintiff's pre- and post-incident medical bills and records currently in Plaintiff's possession and as may be otherwise obtained during discovery.
- viii. Any document identified in Defendant's Rule 26 Disclosures

b. The following categories of documents are being withheld from production at this time on the grounds of attorney-client privilege and/or subject to protective order and/or work product and/or settlement negotiation privilege: communications between plaintiff and her attorneys and research (legal and/or factual) by, or directed by, such attorneys.

3. Computation of Damages Claimed by Plaintiff:

- a. Past pain
- b. Past suffering.
- c. Current and future pain
- d. Current and future suffering.
- e. Past inconvenience.
- f. Current and future inconvenience.
- g. Past emotional distress.
- h. Current and future emotional distress.

- i. Pre-judgment and post-judgment interest.
- j. The total amount of damages are estimated at \$5,000,000.00, plus reasonable attorneys fees and costs, pre-judgment interest and post-judgment interest, to be computed at the close of litigation.

4. Insurance agreements:

- a. Plaintiff has none applicable to this action.

Respectfully submitted,
SAMANTHA ROOP
Plaintiff

/s/ _____ Nikita Wolf, Esq. _____

Nikita Wolf (VSB No. 86939)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Phone: (804) 888-8888
Facsimile: (804) 359-5426
Email: nwolf@mcdonaldinjurylaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2021, the foregoing Rule 26(a)(1) disclosures was electronically mailed to the following:

Carter T. Keeney, Esq. (VSB # 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Phone: (804) 747-7470
Facsimile: (804) 747-7977

Email: ckeeney@carterandshands.com
Counsel for Defendant

/s/ Nikita Wolf, Esq.
Nikita Wolf, Esq.

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

**REPLY BRIEF TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION IN
LIMINE TO EXCLUDE DR. GUERRETTE FROM TESTIFYING AT TRIAL, TO
EXCLUDE PLAINTIFF’S MEDICAL BILLS FOR DR. GUERRETTE’S TREATMENT,
AND TO EXCLUDE ANY MENTION OF ANY CONDITION TREATED BY DR.
GUERRETTE**

COMES NOW, Nicholas James Desousa, by counsel and for his reply to Plaintiff’s opposition to Defendant’s Motion in Limine to exclude Dr. Nathan Guerrette from testifying at trial, to exclude Plaintiff’s medical bills for Dr. Guerrette’s treatment, and to exclude any mention of any condition treated by Dr. Guerrette and states the following in support thereof:

DISCUSSION OF LAW AND ARGUMENT

I. Dr. Guerrette’s testimony is not relevant to any fact at issue.

Dr. Guerrette should not be permitted to testify as his testimony is not relevant to any fact at issue. Plaintiff is attempting to get around her failure to disclose an expert witness by calling Dr. Guerrette as a fact witness. Plaintiff claims Dr. Guerrette will not offer any expert opinions, but the Guerrette Memorandum of Fact, which is also untimely as discovery has closed, is replete with opinions. In said Memorandum paragraphs, 7, 8, 9, 11, 12, 13, 14, 16, 18, 20, 25, 26, 27 28, and 29 all contain expert opinions. Paragraph 29 claims that Dr. Guerrette “can state that it is more likely than not that the car accident that occurred between the Plaintiff and

Defendant on July 7, 2019 caused Ms. Roop's Interstim to malfunction as well as the pelvic prolapse and pelvic floor dysfunction.

Plaintiff admits no expert can opine that the subject accident caused the condition for which Dr. Guerrete treated the Plaintiff and that no expert can opine the medical bills for the same were causally related to the subject accident. Without this key link needed to establish the damages for the same, none of his testimony is relevant.

In *Springs v. Waffle House, Inc.*, Civil Action No.: 3:18-cv-03516-JMC, 2021 U.S. Dist. LEXIS 6031 (D.S.C. Jan. 13, 2021) a district court in a South Carolina diversity case ruled that when a Plaintiff failed to disclose treating physicians as experts, they could not offer expert opinions. In that case a Waffle House employee allowed hot coffee to be spilled on a fourteen month old toddler, which resulted in second degree burns. The court stated that it would not permit the non disclosed doctors to provide any expert opinions, including "expert opinions on the infant's diagnosis, prognosis and future medical needs." *Id.* at *8. The doctors could only testify as to their observations and course of treatment. The court in that case did not address whether such testimony was relevant to any fact at issue, presumably because there was no dispute about the causation of the burns on the toddler. In this case, there is absolutely a dispute about the causation of the Plaintiff's claimed injuries.

Plaintiff's reliance on *Gomes v. Rivera Rodriguez*, 344 F.Ed 103, 133 (1st. Cir. 2003) and *Indemns. Ins. Co. of N. Am. V. Am. Eurocopter, LLC*, 227 F.R.D. 41 (M.D.N.C. 2005) is also misguided. Dr. Guerrette did not play a personal role in the unfolding of the events. His involvement is solely as a medical doctor treating a complicated medical issue. Further, under Virginia law, "an opinion concerning the causation of a particular physical human injury is a component of a diagnosis, which is the practice of medicine." *John v. Im*, 263 Va. 315, 321, 559

S.E.2d, 694, 697 (2002). Expert testimony is required to state the causation of a physical injury and as such, Dr. Guerrette cannot testify as to the causation of any injury.

Again, Plaintiff fails to address the seminal issue: in order to claim damages for the bladder and prolapse issues, the Plaintiff needs an expert to opine such issues were caused by the subject accident. Absent an expert to opine as to the causal relation, there is no relevance. Plaintiff does not have an expert to opine as to causation and therefore any testimony regarding the same is not relevant.

II. Plaintiff's medical bills should be excluded as an expert is required to opine as to causation regarding injuries that arose from a motor vehicle accident.

Plaintiff cannot introduce her medical bills for Dr. Guerrette's treatment absent expert testimony concerning causation because Defendant has a substantial contest. *McMunn v. Tatum* 237 Va. 558, 379 S.E.2d 908 (1989) does not limit its holding to medical malpractice cases when it states:

We now hold that where the defendant objects to the introduction of medical bills, indicating that the defendant's evidence will raise a substantial contest as to either the question of medical necessity or the question of causal relationship, the court may admit the challenged medical bills only with foundation expert testimony tending to establish medical necessity or causal relationship, or both, as appropriate.

In fact, in *McMunn v. Tatum*, the Supreme Court was clarifying an opinion from *Walters v. Littlejohn*, 223 Va. 446, 290 S.E.2d 839 (1982), which was a personal injury lawsuit involving an automobile accident.

Plaintiff also provided an incomplete quotation of *McCauley v. Purdue Pharma L.P.*, 331 F. Supp. 2d 449, 450 (W.D. Va. 2004). In that case, the opinion actually reads, "[i]t is of course true that Virginia tort law does not mandate expert testimony to show proof of causation in every case. However, in a products liability action, proof of causation must ordinarily be supported by

expert testimony because of the complexity of causation facts.” Again, *McMunn* states the expert testimony as to proof of causation is required when there is a substantial contest as in this case. Further, this is a complicated medical issue that requires medical expert testimony. This is not some instance of coffee burns or immediate neck and back pain from an accident. In *McCauley*, the Court granted Defendant’s motion for summary judgment because Plaintiffs could not proffer expert testimony as to the causation of an injury and absent said expert testimony, there was no issue of fact for the jury.

To allow the jury to consider Plaintiff’s bills for Dr. Guerrette’s treatment absent expert testimony would require speculation. It is well settled Virginia law that “proof of defendant’s tortious conduct and of the plaintiff’s injury is not sufficient to establish a cause of action. These elements alone do nothing more than place the dispute in the realm of speculation and conjecture.” *Id.* at 461 (citing, *Blacka v. James*, 205 Va. 646, 139 S.E.2d 47, 50 (1964)).

Sumner v. Smith, 220 Va. 222, 257 S.E.2d 825, (1979) and *Todt v. Shaw*, 223 Va. 123, 286 S.E.2d 211 (1982) do not concern the admissibility of medical bills.

Plaintiff also states on page ten of her brief that the bills and records help establish the probability or improbability of the injuries being caused by the July 7th accident. Her brief states, “...a doctor will testify as to the Plaintiff’s injuries and his treatment diagnosis and observations of the same.” In this sentence, the Plaintiff is revealing her true purpose, which is to back door an expert opinion from Dr. Guerrette and to invite the jury to speculate in an effort to recover over \$500,000 in medical bills without a doctor opining that the treatment for the same is medically necessary. However, an expert is required to opine as to the causation and medical necessity of such treatment and without the same the bills are not admissible.

Additionally, with no expert to opine as to causation, Dr. Guerrette's testimony and the bills for his treatment are not relevant and are not admissible.

CONCLUSION

WEHREFORE, the Defendant, by counsel, respectfully requests that this honorable court grant Defendant's Motion in Limine and exclude Dr. Guerrette from testifying at trial, exclude Dr. Guerrette's bills from evidence, exclude any mention of Dr. Guerrette's treatment and for such other relief as justice may require.

NICHOLAS JAMES DESOUSA,
By Counsel

_____/s/_____, p.d.

Carter T. Keeney, Esquire (VSB# 82275)

Carter & Shands, P.C.

9030 Stony Point Parkway, Suite 530

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Telephone: (804) 747-7470

Facsimile: (804) 747-7977

ckeeneey@carterandshands.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 12th day of April, 2022, I will send via email the foregoing to counsel listed below and I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Samantha Cohn, Esquire (VSB# 89091)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Telephone: (804) 888-8888
Facsimile: (804) 355-9988
scohn@mcdonaldinjurylaw.com
Counsel for Plaintiff

_____/s/_____, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
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Richmond, VA 23235
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Facsimile: (804) 747-7977
ckeene@carterandshands.com
Counsel for Defendant

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

* * * * *

SAMANTHA ROOP,

Plaintiff,

vs.

NICHOLAS JAMES DESOUSA,

Defendant.

* * * * *

* CIVIL NO. 3:21-CV-00675

* MAY 3, 2022 11:00 A.M.

* MOTION IN LIMINE

* VOLUME I OF I

*

*

* Before:

* HONORABLE DAVID J. NOVAK

* UNITED STATES DISTRICT JUDGE

* EASTERN DISTRICT OF VIRGINIA

APPEARANCES:

For the Plaintiff:

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Roop v. Desousa - 05/03/2022

1 (Court convened at 11:00 a.m.)

2 THE CLERK: Civil Action 3:21-CV-675, *Samantha Roop*
3 *versus Nicholas James Desousa*.

4 Representing the plaintiff is Samantha B. Cohn.
5 Representing the defendant is Carter T. Keeney.

6 Counsel, are we ready to proceed?

7 MR. KEENEY: Yes, ma'am.

8 MS. COHN: Yes, madam.

9 THE COURT: Okay. Mr. Keeney, we're here on your
10 motion.

11 MR. KEENEY: Yes, Your Honor. May it please the
12 Court. Would you like me to stand here or at the podium?

13 THE COURT: At the lectern.

14 And I'm going to ask you some questions before you
15 get wound up there.

16 MR. KEENEY: Yes, sir.

17 THE COURT: Because I know you get wound up.

18 MR. KEENEY: Just a little, Your Honor.

19 THE COURT: All right. So am I right to believe that
20 you're admitting liability in this case?

21 MR. KEENEY: We have not formally admitted liability.
22 There is a -- in all likelihood, yes, Your Honor.

23 THE COURT: I'm going to give you 10 days to figure
24 that out. Okay?

25 MR. KEENEY: Yes, sir.

1 THE COURT: Number two is am I right to believe that
2 if you admit liability, you're not contesting what are what
3 I'm going to refer to as the standard traffic accident
4 damages? This is all about this pelvic prolapse, right?

5 MR. KEENEY: Up until a certain point, Your Honor.
6 The initial injuries in this was certainly sufficient impact
7 to cause soft tissue injuries, and she's claiming a
8 concussion. As I put in my brief, in early September, while
9 she was still treating with Dr. Camden and the physical
10 therapist, the records reflect the plaintiff was thrown from a
11 horse and dragged through a field. It will be the defense's
12 position at trial that any problem after that would be related
13 to the fact that she got dragged through a field. And, in
14 fact, in one of the medical records, she stated that she was
15 doing well until that event occurred.

16 THE COURT: Okay.

17 MR. KEENEY: So it would be no real contest up until
18 that date, which I believe is September 8th of '19.

19 THE COURT: That's the horse accident?

20 MR. KEENEY: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. KEENEY: And the other soft tissue treatment is
23 only about another month.

24 THE COURT: Okay. It seems to me here that while the
25 doctor cannot testify -- provide expert testimony for the

1 reasons you say in your motion, he can provide fact-based
2 testimony. Do you disagree with that? Because the case law
3 is pretty clear on that.

4 MR. KEENEY: Well, here's the question on that, Your
5 Honor: What is that fact-based testimony? The bills under
6 *McMunn versus Tatum* do not come in where there's a substantial
7 contest. And if you look at the affidavit, Memorandum of Fact
8 that the plaintiff provided in this case, it's replete with
9 opinions. In there, the plaintiff suggests that Dr. Guerette
10 should be able to testify that it's more likely than not that
11 the injury was caused by the accident.

12 THE COURT: He can't do that. But here's kind of
13 what I'm thinking, okay? It seems to me that, as I understand
14 the facts here, he treated the plaintiff from 2011 to 2013,
15 right?

16 MR. KEENEY: I believe so, yes, Your Honor.

17 THE COURT: So he could say, "Look, I treated her for
18 this" -- is it pelvic prolapse? Is that the appropriate
19 description?

20 MR. KEENEY: There are other -- in layman's terms, I
21 believe so. I don't know the exact --

22 THE COURT: All right. You know my point.

23 MR. KEENEY: Yes, Your Honor.

24 THE COURT: He treats her for the two years. He
25 installs this device, the InterStim bladder device, right?

1 MR. KEENEY: Yes, sir.

2 THE COURT: The last time -- if I'm wrong on the
3 facts, the two of you, I want you to correct me on this, okay?
4 You'll get your chance. But he can say that he installed this
5 device, and then the last time he observed her she was fine.
6 Did not see her again until after the accident. I think he
7 starts seeing her again on October 8th, 2019. And he can
8 say that -- give factual testimony, "I observed her and this
9 was her condition."

10 Now, I think the case law is pretty clear about that.
11 Then the question becomes, and I think you've made this point,
12 is, what is the relevance of that? But the case law is also
13 clear that lay testimony can establish causation. So it seems
14 to me that she could testify to the following. I mean, I'm
15 not sure she would, I mean, but she could.

16 MR. KEENEY: She being the doctor or the plaintiff,
17 Your Honor?

18 THE COURT: The plaintiff.

19 MR. KEENEY: Okay.

20 THE COURT: I thought the doctor was a male.

21 MR. KEENEY: The doctor is a male. I was just making
22 sure I was on the same page.

23 THE COURT: Yeah. So the plaintiff could come in and
24 say, "I had this issue with my pelvic prolapse. I saw
25 Dr. Guerette from 2011 to 2013. He put this device in me. My

1 life was perfect. I'm in a car accident and all of a sudden
2 my life is crap. And the reason that -- the only change is
3 the car accident. I go to him; now the device is not
4 working." And he could say, "I'm looking at it and the device
5 is not working." That's a factual thing. Now, he can't opine
6 on what the cause is, okay? But she can say that the factual
7 difference is the only thing that caused the change was this
8 accident.

9 Now, you then could come back and put on evidence
10 about this horse accident and the jury would decide whether or
11 not it's the accident or the horse that caused the difference.
12 What's wrong with that? Because that seems to me to be all
13 supported by the case law.

14 MR. KEENEY: Well, Your Honor, and it is. I believe
15 *Fitzgerald*, it's a 4th Circuit case, Your Honor, *Fitzgerald*
16 *versus Manning*, a 1982 case, that invites speculation and
17 conjecture from the jury, which the jury is not allowed to do.

18 THE COURT: No, there's no speculation. They have to
19 prove it beyond a preponderance of the evidence. They have to
20 say, draw reasonable inferences, and I would give jury
21 instructions that their -- they would have to establish beyond
22 a preponderance that what caused the change was this car
23 accident. You would say, no, it's the horse, right?

24 MR. KEENEY: I think we're -- for lack of a pun,
25 we're putting the cart before the horse, Your Honor. I

1 wouldn't submit that saying that an Interstim is broken, a
2 layperson can't do that. That requires a trained expert to
3 say that this device is malfunctioning.

4 THE COURT: Well, no. The doctor can say, "I
5 evaluated her in" -- I think it was October, September or
6 October.

7 MR. KEENEY: It was October 8th, yes, Your Honor.

8 THE COURT: Okay. "I examined her. She complained
9 of issues. I took a look, and this device is no longer
10 functioning." Now, why the device is no longer functioning he
11 cannot opine on, right?

12 MR. KEENEY: Correct.

13 THE COURT: But she could say, "I had no -- I felt
14 great until the day I got hit by the car, and after that I
15 started feeling crappier and crappier. I went to see the
16 doctor, and, oh, my device is not working. The only
17 intervening event that could have caused that was the car
18 accident." You come in and say, "No. It was the horse that
19 did it," and the jury decides. Because you're really asking
20 me to decide causation now, and I think juries decide these
21 issues.

22 MR. KEENEY: Well, Your Honor, I think under *Todt v.*
23 *Shaw* she can say, "This part of my body hurt after the
24 accident." The question is should the plaintiff or her
25 counsel be allowed to argue or suggest that it was caused by

1 the accident absent a medical doctor opining to the same,
2 which is --

3 THE COURT: The case law is clear that it can be
4 established by lay evidence. She cited the *Sumner* case, and
5 she's right about that, and the *McCauley case versus Purdue*
6 *Pharma*. This could all be established by lay testimony. And
7 it makes sense; it's common sense. She can say, "I felt like
8 this one day," you know -- and this is not like a small period
9 of time. As I understand the facts, she's treated from 2011
10 to 2013. She then has six years of, like, "I'm feeling
11 great." And then all of a sudden this accident happens in
12 2019 and all of a sudden she's got problems. I mean, I think
13 that's a reasonable argument for the plaintiff to go to the
14 jury on that.

15 MR. KEENEY: Your Honor, again, pushing back a little
16 bit. On *McCauley versus Purdue Pharma*, it wasn't always that
17 they don't have to have an expert, as I cited in my reply
18 brief. In straightforward situations, you don't need one. I
19 think the plaintiff cited the case of the child in South
20 Carolina having the coffee, the hot coffee spilled on them and
21 burned. Well, obviously, right after an accident or an
22 incident of hot coffee is spilled on someone and there's a
23 burn, you don't -- common sense tells us that.

24 What the Western District says in *McCauley versus*
25 *Purdue Pharma* is, "It is a settled principle of Virginia tort

1 law that proof of defendant's" --

2 THE COURT: Hold on one second. Why don't you slow
3 down. I've got a new court reporter.

4 MR. KEENEY: Okay.

5 THE COURT: And I don't want her to quit on me just
6 because of you.

7 MR. KEENEY: Yes, Your Honor.

8 "It is a settled principle of Virginia tort law that
9 proof of the defendant's tortious conduct and of the
10 plaintiff's injury is not sufficient to establish a cause of
11 action. These elements alone do nothing more than place the
12 dispute in 'the realm of speculation and conjecture.'" They
13 cite *Blacka v. James*, a 1964 Virginia Supreme Court case.
14 "Instead, a plaintiff seeking recovery bears the burden of
15 producing -- to produce evidence showing that the defendant
16 was the proximate cause of the injury sustained. 'The
17 proximate cause of an event is that act or omission which, in
18 natural and continuous sequence, unbroken by'" --

19 THE COURT: You're picking up speed again.

20 MR. KEENEY: -- "'an efficient intervening cause.'"
21 And then it goes on from there.

22 But the point, Your Honor, is under *John v. Im*, a
23 diagnosis is part of the practice of medicine, and to have
24 that, you have to have an expert opinion. That is what the
25 Virginia Supreme Court has said. So if there's no doctor that

1 is the linchpin to tie all this together, she can say, "This
2 part of my body hurt after the accident." *Todt v. Shaw* and
3 *Sumner* say that. But to say that --

4 THE COURT: And then the doctor says, "I examined
5 her" -- because he can do that as a fact witness -- "I
6 examined her and the device is no longer working." He can't
7 say why the device is not working. He can't opine that it's
8 because of the accident. All he can say is, "The last time I
9 saw her was in 2013; the device worked. Now, six years later,
10 she comes to me making these complaints that she's not feeling
11 well. I examine her and I can see that the reason is the
12 device is no longer working."

13 Now, why the device is no longer working, that's
14 what's in dispute. And what she would say is, "I felt
15 fine" -- I suspect this is what she's going to say. If it's
16 not, I want to hear otherwise. "I felt fine until the
17 accident. Accident happens, and now all of a sudden I'm
18 feeling terrible to the point that I go see the doctor and the
19 doctor says, 'Hey, your device is not working. That's why
20 you're not feeling well,'" right? That's enough to go to the
21 jury in my view.

22 Now, you can put on a defense. To be clear, you can
23 make all your arguments about the horse, or you could even put
24 on that the -- I don't know what the lifespan is of an
25 InterStim bladder device. You know, maybe they only last five

1 years. But you can put on that expert testimony if you've
2 preserved your notices as well. I haven't looked at that.
3 But the jury should decide that.

4 Now, here's what I'm thinking, just so we're on the
5 same page, because I'm going to talk to Ms. Cohn about this:
6 I'm thinking about bifurcating this. Assuming you're
7 admitting liability, which it seems to me you ought to, I'm
8 thinking of bifurcating simply on the issue of causation,
9 right? So you would tell me which injuries you're in
10 agreement on, and you would tell me which injuries you're in
11 disagreement on. It seems like the home run issue here, all
12 the money is about this pelvic prolapse issue, right? I mean,
13 the other stuff, it's minor.

14 MR. KEENEY: This case would in all likelihood be
15 resolved if that was the only --

16 THE COURT: Right. Right. So what I'm thinking is
17 we do -- we're going to do a bifurcated trial. Part 1, again,
18 assuming you're admitting liability, is simply causation on
19 the injuries in dispute. I would charge the jury you admit
20 that your client is -- well, the driver is responsible for the
21 car accident. You have a dispute as to what injuries the car
22 accident caused. The jury is going to decide simply whether
23 these particular injuries are from the car accident, okay? No
24 evidence of damages during that; simply a finding on
25 causation, okay? They find "no" on causation, case is over.

1 They find "yes" on causation, we go to the second phase of the
2 trial.

3 And I commonly anyhow bifurcate civil cases, damages
4 and liability, anyhow, right? Because I think that you don't
5 want -- this is what she wants to do. She's trying to use all
6 these bills to get the jury all worked up to find in her
7 favor, right? Well, she can't introduce any of the bills,
8 that's the bad news for her, until the second phase.

9 So there's no evidence about damages, there's no
10 introduction of bills or anything like that in phase 1. That
11 only goes to phase 2. So what you would do is you would open
12 and close during phase 1 on simply the issue of causation.

13 Now, I'm assuming you're admitting liability because
14 I thought you told me that during the initial pretrial
15 conference. Maybe I'm wrong, but I thought that's what you
16 had said. You'll tell me that. But if you don't, we'll have
17 a trial on liability and causation, okay?

18 But there will be no evidence about damages during
19 phase 1. Jury comes back in her favor, we go to phase 2.
20 They come back in your favor, there is no phase 2. It's over,
21 right? Phase 2, again, you stand up, you open, it's another
22 trial. You argue to the jury, "Here's what you found these --
23 this is the causation. Now let me talk to you about the
24 damages, how this woman has been harmed by this and why you
25 should give her a million dollars," or whatever it is, right?

1 And you would put on your evidence but simply on damages. She
2 would put on hers, they would -- you would put on yours. But
3 none of that would come in during phase 1.

4 What's wrong with that plan? Because I think it's
5 pretty ingenious since I came up with it.

6 MR. KEENEY: Well, Your Honor, the reality is this is
7 all tied in together in that she wants to -- because it
8 prejudices my client in presenting the entire defense, which
9 is, really what's going on here is the plaintiff is trying to
10 back door an expert opinion that all of these pelvic, vaginal,
11 complicated issues were caused by the accident without an
12 expert to get \$500,000 in medical bills.

13 THE COURT: I'm not letting her do that. I'm not
14 letting her back door an expert. I'm telling you that right
15 now. I'm putting very strict limits on what it is.

16 But the case law is clear, this doctor can testify as
17 a fact witness; he cannot testify as an expert witness. The
18 case law is clear on that. So then the question is, and your
19 point was well taken, what is the relevance, right? And the
20 answer to that is -- because that was my first thought, well,
21 you know, how is that relevant, then?

22 The answer is, through lay testimony, they can
23 establish causation. Juries should decide this, not judges.
24 The jury should decide whether or not this accident caused
25 this pelvic injury or any other injuries that you think are in

1 dispute.

2 But I'm going to isolate that so there's no prejudice
3 to your client. So there will be no discussion about
4 long-term effects or bills or anything like that. It's just
5 the plaintiff could testify, "Hey, I had this injury in 2011.
6 In 2013, I got this device put in me; the doctor did it.
7 After that, my life was perfect. I'm in a car accident. Hey,
8 they admit that he hit me. I start feeling crummy, it gets
9 worse, I go see the doctor. The doctor tells me my device is
10 not working anymore and so I had to get treated for that."
11 That's it. And then the jury decides whether that's enough.

12 And you put on your horse evidence, you put on
13 whatever else you want in defense that you've preserved. They
14 prevail, we go to phase 2. You prevail, the case is over.
15 But the jury has decided that. Juries decide questions of
16 fact, not humble judges like me.

17 MR. KEENEY: Yes, Your Honor. I will say that at
18 least the second part is, under *McMunn versus Tatum*,
19 regardless of whether or not a jury ultimately believes that
20 an injury was caused by an accident, the bills under black
21 letter Virginia law only come in with expert testimony. And I
22 think the Court has already stated there is no expert
23 testimony, so I'm not sure it would be that judicially
24 efficient to bifurcate the trial on the issue of damages if
25 the \$500,000 in bills are not coming in regardless.

1 THE COURT: Well, your motion only addressed
2 causation. You didn't really address the damage issue. Why
3 is it that they -- I mean, if there is an issue of causation,
4 right, if the jury finds against you and for her, why would
5 not all the bills for that treatment just come in
6 automatically?

7 MR. KEENEY: Because the Virginia Supreme Court has
8 explicitly said they don't in *McMunn versus Tatum*. It is
9 not -- they have stated that where the defense says they have
10 a substantial contest as to the causation medical necessity of
11 bills, that absent expert testimony, they do not come into
12 evidence. There are other elements under Virginia Model Jury
13 Instruction 9.000, the standard injury instruction, that a
14 plaintiff can recover. But the Virginia Supreme Court in
15 *McMunn versus Tatum*, as well as *Norfolk Bev Company v. Cho*,
16 259 Va. 348, a 2000 Virginia Supreme Court case, have
17 explicitly said the bills do not come in without expert
18 testimony.

19 THE COURT: Well, your motion really doesn't address
20 that, but if that's what it takes, I'm going to let her put it
21 in.

22 You're on notice here. This is all about a notice
23 issue, right? And you know what the bills are. Listen, this
24 case is going to be decided by the jury. It's going to be
25 decided on causation first, and then I'm going to let her put

1 the bills in if she makes it. Now, I don't know if she's
2 going to make it or not, right? That's what the other issue
3 is.

4 But if you want to file something on this -- but I'm
5 going to let her put the bills in. So if you want to file
6 something, I'll let her put the expert testimony on about just
7 the bills.

8 MR. KEENEY: Your Honor, I did file a motion in
9 limine to exclude the bills. That's part of my motion.

10 THE COURT: I thought it was focused on causation.
11 I'll go back and take a look at it. But I'm going to let her
12 put the bills in. So if that means allowing her to put that
13 doctor on for that, I'm going to let them do it.

14 MR. KEENEY: In the second part of the trial?

15 THE COURT: In the second part, right. It seems to
16 me you ought to stipulate to that, but that's up to you.
17 That's up to you.

18 MR. KEENEY: No, Your Honor, I preserve my objection
19 for that --

20 THE COURT: Yeah.

21 MR. KEENEY: -- citing *McMunn versus Tatum*.

22 THE COURT: Yeah. I think the question is whether
23 they can make it to the jury after phase 1. I mean, to me,
24 the only evidence I'm aware of is the plaintiff. But I think
25 that's enough to go to the jury.

1 MR. KEENEY: And, Your Honor, frankly, my point on
2 the bills and sort of this is it's essentially a motion to
3 strike that portion of the case because the evidence that they
4 have at the close of discovery requires speculation and
5 conjecture by the jury, because they do not have a medical
6 expert to opine that that treatment was medically necessary.

7 THE COURT: Okay. We're past that, okay? I've
8 already told you the jury is going to decide this issue of
9 causation. I'm going to bifurcate it, and I'm going to
10 proceed in this fashion. The only question is, is how these
11 bills are going to come in. I think you ought to meet and
12 confer about that, and then if you want to file something,
13 I'll take a look at it.

14 MR. KEENEY: Yes, sir.

15 THE COURT: And we'll kind of go from there. But I'm
16 letting them put on their damage case, okay, but only in phase
17 2 and only if they prevail past causation.

18 MR. KEENEY: So as a point of clarification, phase 1
19 would be causation simply on the pelvic bladder injuries,
20 phase 2 will --

21 THE COURT: Hold on. No. It is -- I thought that
22 was the only injury in dispute. You just told me something
23 different when we got started. You said there might be
24 another injury.

25 MR. KEENEY: Yeah.

1 THE COURT: What I'm saying to you is I need to know
2 first are you admitting liability?

3 MR. KEENEY: Yes, sir.

4 THE COURT: I'm giving you 10 days, okay? In that 10
5 days, I also want you to tell me what injuries are in dispute,
6 which ones are not, okay? Phase 1, assuming you're admitting
7 liability -- if you're not, it's going to be liability and
8 causation, okay? -- no damages. There will be no damages in
9 phase 1, okay?

10 If they make it over the hump on -- well, if you
11 contest liability, they have to establish that too. I don't
12 think that would be a good idea for you, frankly, but that's
13 up to you -- then they'd have to establish causation. They
14 make it on causation, we go to phase 2.

15 Now, you're going to give me, under my scheduling
16 order, now two sets of jury instructions. You're going to
17 open twice if the jury finds causation. Again, if they find
18 for you, it's only phase 1, right? But I have to plan for
19 both, right? So they find for the plaintiff on phase 1, we
20 immediately come back, you open to the jury -- well, she'll
21 open first, you'll open second, she'll put on her evidence on
22 damages, you can put on any evidence you want, and you close.
23 So I'm looking for two sets of jury instructions now on this
24 as well.

25 MR. KEENEY: Yes, Your Honor. And my question for

1 clarification is, in my mind there would have to be a phase 2,
2 regardless, to decide the pain and suffering, noneconomic
3 damages for the injuries that we agree were caused by the
4 accident.

5 THE COURT: That's fine. Yeah, it all comes in
6 there. Yeah. Maybe you'll still settle this case now that
7 you know what's going on here.

8 I mean, look, to me, you both have major risk here,
9 right? I mean, if the jury finds causation against you, the
10 number is going to be pretty big. But they might get nothing
11 out of it. It could be they find nothing because the only
12 witness that's testifying, that I'm aware of, is the
13 plaintiff. I'm going to hear from plaintiff's counsel right
14 now to see what this is going to look like. And you can put
15 on all this stuff about the horse accident, and you can -- if
16 you've preserved your notice about the life span of an
17 InterStim bladder device -- I mean, I don't know how long
18 these things last.

19 MR. KEENEY: Dr. Guerette testified to it in his
20 deposition, and I, in a supplemental answer, mentioned that.

21 THE COURT: Okay. But are you having him opine on
22 that? Because once you ask him that, the door is open, right?

23 MR. KEENEY: And, Your Honor, I guess that's back to
24 the original question: If he can say -- if it's a factual
25 statement that the Interstim is broken, how is it not also a

1 factual statement that the life span of this device is five
2 years, or whatever?

3 THE COURT: Because that's an opinion. That's not an
4 observation.

5 MR. KEENEY: Well, if it's in the literature, how --

6 THE COURT: If it's in the literature, that's an
7 expert opinion.

8 MR. KEENEY: I'm sorry.

9 THE REPORTER: One at a time, please.

10 MR. KEENEY: I guess my point is it would be
11 Dr. Guerette. I can't look at an InterStim, you can't look at
12 an InterStim and say that it's not working.

13 THE COURT: Right. Dr. Guerette would say, "This is
14 broken." The question is, "Why is it broken?" right? Now,
15 what I'm limiting them, I'm saying you can't ask the doctor,
16 "Why is this broken?" because that would be expert opinion.
17 But if you do, that opens the door to them, right? If you
18 say, "Hey, could it be that the thing just ran out of gas,
19 because they normally only last five years?" Well, then she
20 can come back -- because that's an opinion, right? That's
21 different than fact testimony.

22 MR. KEENEY: Yes, sir.

23 THE COURT: Do you understand what I'm saying to you?

24 MR. KEENEY: Yes, sir.

25 THE COURT: I think what you ought to do is, I'm

1 going to give you my order, you're going to respond in 10 days
2 about what's in dispute. I think the two of you ought to meet
3 and confer a little bit about what this is now going to look
4 like, since I'm telling you about this. I think you ought to
5 have another settlement conference too, but that's up to you
6 guys. I'm not going to make you do that. And then we ought
7 to flesh out what you think this is going to look like. And
8 if there's further dispute, you could file another motion in
9 limine. You'll get my parameters -- I've already told you --

10 MR. KEENEY: Yes, Your Honor.

11 THE COURT: -- but you'll get my parameters, and then
12 you ought to take a look at this. I mean, I'm hitting you
13 with it now. I know you haven't digested it in the way that
14 you really need to digest it. Sit back and think about it,
15 confer with your opponent, and you can both talk about how you
16 think this is going to go in. If there's a dispute, you file
17 another motion in limine and we'll reconvene, okay?

18 MR. KEENEY: Yes, Your Honor.

19 THE COURT: All right. Ms. Cohn.

20 So, Ms. Cohn, I suspect you like my ingenious idea
21 because you have not a whole lot left to work with. Am I
22 right about that?

23 MS. COHN: Can I put on the record that you're the
24 smartest judge I've ever been in front of?

25 THE COURT: Well, look, you'd just be one of many in

1 a long line, but that's okay. But, no. Look, here's the
2 issue: Without Dr. Guerette opining as to what the cause is,
3 are we left with the plaintiff essentially saying what I said?

4 MS. COHN: Somewhat, Your Honor. I tried to make it
5 clear in my memo of fact, and I do agree with defense counsel,
6 that 29, paragraph 29, particularly does delve into opinion
7 testimony. However, the preface of that sentence was that he
8 will not be asked that question. It was simply a
9 demonstrative aid for the Court to understand that I'm not
10 trying to shove a square peg into a round hole.

11 So we have Ms. Roop; we have her partner, Mr. Barton,
12 that's been with her for 15 years; her daughter was also in
13 the vehicle, who is 17 years old; and then we have
14 Dr. Guerette.

15 THE COURT: Hold on. Let's put Dr. Guerette aside.
16 So we've got the partner and the daughter, right? They're in
17 the car, right?

18 MS. COHN: Well, the partner is not in the car.

19 THE COURT: Okay. What does he have that's relevant?

20 MS. COHN: The testimony of, Your Honor, as the case
21 law states, what he witnessed transpire after the accident
22 happened, her physical condition, how it affected her. That
23 was in the case law that I stated in my motion, Your Honor,
24 the lay opinion testimony that's allowed as to a change in
25 physical condition.

1 THE COURT: Well, he can say, "Look, I saw that, you
2 know, she was a healthy person before. This accident happens,
3 and then this is the change that I observed in her personal
4 condition."

5 MS. COHN: Correct.

6 THE COURT: That's it, though. He can't attribute it
7 to the accident.

8 MS. COHN: Absolutely not, Your Honor.

9 THE COURT: He can just say, "This is my
10 observation." If they admit liability, then, what's the
11 daughter going to say, then, that's any different? It's the
12 same as the husband?

13 MS. COHN: It would probably be cumulative at that
14 point. Your Honor, at no point during this proceeding would I
15 have anybody point a finger and say, "It was the car
16 accident." I am very aware of the four corners that I am
17 bound by. Given the procedural history of this matter, I'm
18 more than confident that I can navigate within those four
19 corners and not have anybody opine and violate Your Honor's
20 decision as to the expert testimony.

21 THE COURT: Well, you would be able to argue.
22 Essentially, the plaintiff -- am I right about this: The
23 plaintiff is going to say, "This device worked perfect until I
24 got hit by the car. Then I started feeling crummy. I go to
25 the doctor, and then we realize the device is not working"?

1 Is that essentially what she's going to say?

2 MS. COHN: Your Honor, so initially when Dr. Guerette
3 treated her in 2011 through 2013, it was for an overactive
4 bladder issue. And the Interstim is specifically implanted
5 into the third sacral nerve, and it literally is a pacemaker
6 between your bladder and your brain, to zap your bladder to
7 work appropriately with your nerve and respond and fully empty
8 and things of that nature. The prolapse was never an issue
9 prior to the accident.

10 So it is going to be testimony as to a change in her
11 condition that she will attribute to the accident. The
12 doctor, as stated, will testify to his treatment, diagnosis,
13 and observations at that time and the change of her condition.
14 There will be no mention as to causation out of -- in his
15 testimony.

16 THE COURT: Okay. All right. You know the
17 limitation now on the damages? There's not going to be any
18 discussion whatsoever, "Hey, I've had to pay \$500,000 in
19 medical bills," or none of that. You understand that?

20 MS. COHN: I completely understand, Your Honor.

21 THE COURT: Now, you know you're going to have to
22 give me two sets of jury instructions, then, too. I think
23 you'll probably haggle a little bit over the instructions.

24 So what I want you to do is this: I gave him the 10
25 days to address liability and what injuries are exactly in

1 dispute. After that, I want the two of you to sit down and
2 meet and confer about what this is going to look like in terms
3 of proof, right? And then if there is a difference of
4 opinion, I want -- file a motion and we're going to reconvene.
5 I don't want any surprises on this going into it. But I also
6 want the two of you, then, to take my order and put it into
7 jury instructions. Again, you're giving me two sets of
8 instructions, right?

9 MS. COHN: Causation and damages.

10 THE COURT: Causation and damages. Unless they
11 contest liability, then we'd have to have liability
12 instructions with the causation. I don't think they're going
13 to do that, but that's up to them. And then we'll go from
14 there. Does that make sense?

15 MS. COHN: That makes perfect sense, Your Honor. And
16 I do appreciate your understanding with this matter. Thank
17 you.

18 THE COURT: Well, it's not an understanding; I just
19 follow the law. Look, you know, I'm from Pittsburgh. We have
20 a saying, you're hanging by a gnat's eyelash here, right,
21 which tells me -- look, the stuff that you wrote in your
22 pleadings, if I were your law firm I wouldn't be too thrilled
23 about. You basically admitted malpractice on behalf of your
24 law firm. You know, that's not what I would have been
25 writing.

1 I think you need to work this out, though; maybe you
2 can't. But, I mean, to me, you've got a one- or two-witness
3 case going to the jury on causation. Just because I'm letting
4 it go to the jury doesn't mean I think you're going to win in
5 front of the jury. Those are two different issues, right?

6 MS. COHN: Understood, Your Honor.

7 THE COURT: Now, if you do get over that hump, his
8 number is going to be a big number and his adjustor is not
9 going to like that, right? That's why life is about
10 compromise, right? You both need to compromise on this. But
11 to me it's all about whether you get over it.

12 But I will say this: Jurors are not stupid. They're
13 going to use their common sense, and if your client is
14 credible and she gets up there and says, "Everything was fine,
15 and then I get hit by this truck," or car, whatever it is,
16 "and all of a sudden I feel crappy all the time," people are
17 not dumb about what's going on. You know what I'm saying to
18 you?

19 MS. COHN: I wouldn't be fighting so hard, Your
20 Honor, if I didn't have faith in this.

21 THE COURT: Well, that's fine. Okay.

22 Go ahead.

23 MR. KEENEY: Your Honor, one point of clarification,
24 if the Court would indulge me, on what Dr. Guerette can
25 testify to, as Ms. Cohn just mentioned about his diagnosis.

1 And I will quote *John versus Im*, a 2002 Supreme Court opinion.
2 "We also hold that the trial court properly excluded Nash's
3 opinion testimony that John sustained a mild traumatic brain
4 injury as a result of the automobile accident. An opinion
5 concerning the causation of a particular physical human injury
6 is a component of a diagnosis, which is part of the practice
7 of medicine."

8 THE COURT: All right. I've already told you this 25
9 times. He cannot testify about the cause of the accident. He
10 can say that he looked at -- examined her, and this was her
11 condition and the change since he had seen it. He can look at
12 the -- he can say, "I looked at this Interstim bladder device
13 and it was functioning" or "not functioning." That's it. He
14 can't say it's from the car accident. He can't say it's from
15 the horse accident. He can't say -- he can just say, "This is
16 what her condition is." The case law is clear on that.

17 MR. KEENEY: Well, yes, sir. And my question, I
18 guess, and I didn't phrase it properly, he also diagnosed her
19 with some other conditions. I believe it was a pelvic
20 prolapse. And was there another prolapse as well?

21 MS. COHN: It was a vaginal vault, vaginal bladder,
22 and uterine prolapse.

23 THE COURT: He can testify to what he observed;
24 that's what he can do. He can't opine why that happened. He
25 can say, "This is what I see." But he can't say, "This is why

1 it happened." Does that make sense?

2 MR. KEENEY: Yes, Your Honor.

3 THE COURT: I am going to allow any testimony about
4 the damages, so -- if they make it over the hump, you know.

5 MR. KEENEY: Yes, sir.

6 THE COURT: I don't know if they're going to make it
7 over the hump.

8 I'm going to give you an order. You guys are going
9 to sit down, you're going to meet and confer. I want you to
10 file something in 10 days, then meet and confer with her.
11 You-all talk about what this case is going to look like then,
12 and if you still have a further dispute, you'll file something
13 and come back to me.

14 I will say this: I would like to move the final
15 pretrial conference due to a scheduling conflict we have now.
16 I think it's set for July the 13th, a Wednesday. I would
17 like to move it to Friday, the 15th, because I put another
18 trial in there that day and I'm afraid it's going to overlap.
19 Are you open on the 15th?

20 MR. KEENEY: At what time, Your Honor?

21 THE COURT: Pick your time.

22 MR. KEENEY: I have depositions in the morning so I
23 will be free in the afternoon, or I can try to move the
24 depositions.

25 THE COURT: We can do it in the afternoon.

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1 MS. COHN: Whatever the Court would like, Your Honor.

2 THE COURT: How about 2:00 o'clock?

3 MR. KEENEY: That works fine, Your Honor.

4 THE COURT: So the final pretrial conference now will
5 be moved to July 15th at 2:00 p.m.

6 MR. KEENEY: And, Your Honor, will the plan still be
7 to pick the jury on the 21st?

8 THE COURT: Everything else is the same. I want to
9 see what your -- I think what the wise thing is -- let's do
10 this: You file within 10 days the issue about liability and
11 which injuries are in dispute and which ones are not, okay?
12 Then 10 days later -- now, in between I want you-all to meet
13 and confer. Ten days later I want an offer of proof from each
14 of you as to what you would put in in your phase, witness and
15 a brief summary, so everybody knows what's going on here. And
16 then if there's a dispute, you can come back to me. Does that
17 make sense?

18 I really want you to sit down -- I know you disagree
19 with my ruling. That's the way life works, okay? That's what
20 I get paid for. Half the people at least always think I'm an
21 idiot. There is a few that think I'm a genius, but half of
22 them think I'm an idiot. That's just the way I get paid.

23 But I want you to meet and confer and say, this is
24 the ruling, what is this case going to look like now, and
25 break it down by phases.

1 So phase 1 on causation, Ms. Cohn, this is what you
2 would put on. I'm not going to have cumulative evidence.
3 You're going to obviously put your client on. You can pick
4 one of the two, the husband or the daughter, to corroborate.
5 Because corroboration is one thing; cumulative is another
6 thing.

7 Now, if he opens the door, you can save one for
8 rebuttal, though. So if he starts challenging on the horse
9 thing and all that, and one of them you want to save for
10 rebuttal to say, "Hey, you know, I observed her; she was
11 already messed up before the horse incident," or something
12 else, you can do that. I'll deal with that down the road, but
13 put that in your offer of proof.

14 You do the same so I know what you intend to put on.
15 And then the same thing for damages, okay? And that way I
16 kind of know what's going on. You make sure you meet and
17 confer also on the jury instructions. I suspect you might
18 have a dispute on that. Most of it should be agreed to, but
19 if there is a dispute, you let me know so I can take a look at
20 that.

21 Go back to the scheduling order. I'm kind of
22 fanatical about complying with my scheduling order. I just
23 threatened the public defender's office with a \$1,000 fine for
24 not meeting my deadlines. And they have less money than you
25 guys do, since you're in private practice, so I would think

1 I'd add a zero for you-all.

2 MR. KEENEY: Yes, Your Honor. And in the offer of
3 proof, I take it I don't have to put my impeachment evidence
4 in, do I?

5 THE COURT: No. No. I just want to know your
6 witnesses and just like a brief summary, just so I know what's
7 going on, you know.

8 MR. KEENEY: Yes, sir.

9 THE COURT: But I really -- I want you to meet and
10 confer. I do think you need to go back to the magistrate
11 judge and see if you can resolve this a little bit. Again,
12 that's up to you. I'm not going to make you do it. I kind of
13 think this is now going to be a trial. That's kind of what
14 I'm banking on. But, again, that's what we get paid for.

15 MR. KEENEY: Yes, sir.

16 THE COURT: We're glad to have trials. Trials are
17 good.

18 MR. KEENEY: Yes, sir.

19 THE COURT: We're going to move our courtroom back,
20 by the way. It's going to be back to normal by then.

21 MR. KEENEY: Yes, sir. Thank you, Your Honor.

22 THE COURT: Okay. Anything else?

23 MS. COHN: No, Your Honor. Thank you.

24 THE COURT: All right. You know what to do now.
25 We'll get an order out to you.

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1 MR. KEENEY: Please note my --

2 THE COURT: What? What's that?

3 MR. KEENEY: Please note my obsession -- why can't I
4 talk, Your Honor? Exception for the record, Your Honor.

5 THE COURT: Well, you can't talk because you're
6 wrong; that's why. Your tongue knows. Your brain is telling
7 your tongue you're fighting a losing battle here.

8 (Court recessed at 11:29 a.m.)

9

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13

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15 CERTIFICATE

16 I, Melissa H. Custis, certify that the foregoing is
17 a correct transcript from the record of proceedings
18 in the above-entitled matter.

19

20 /s/ Melissa H. Custis, RPR

Date: 05/16/2022

21

22

23

24

25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil No. 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.

MEMORANDUM ORDER
(Granting in Part and Denying in Part Motion *in Limine*)

This matter comes before the Court on Defendant's Motion *in Limine*, moving to exclude (1) Dr. Nathan Guerette from testifying at trial, (2) Plaintiff's medical bills for Dr. Guerette's treatment and (3) any mention of any condition of Plaintiff's that Dr. Guerette treated (ECF No. 18). For the reasons stated on the record during the May 3, 2022 hearing on the Motion, the Court hereby ORDERS as follows:

1. The parties must meet and confer to determine the injuries for which the parties dispute causation, and those for which causation is not in dispute. Within ten (10) days of the entry hereof, Defendant shall file a pleading indicating (1) whether he admits liability and (2) the injuries for which the parties dispute causation and those for which they do not dispute causation.

2. Assuming that Defendant admits liability the Court will bifurcate the trial into two phases. Phase 1 will cover causation of all disputed injuries and will include opening statements, testimony and closing statements. At the conclusion of Phase 1, the jury will deliberate and return a verdict. If there are undisputed injuries, and/or, if the jury finds in Plaintiff's favor on causation, the trial will immediately move to Phase 2. Phase 2 will cover

damages for undisputed injuries and/or those injuries on which the jury found in Plaintiff's favor on causation, and will include opening statements, testimony and closing statements.

3. Defendant's Motion (ECF No. 18) is GRANTED IN PART and DENIED IN PART. Dr. Guerette shall be permitted to testify as a fact witness regarding Plaintiff's course of treatment but may not testify as an expert or opine on the causation of Plaintiff's injuries. *See, e.g., Springs ex rel. C.S. v. Waffle House, Inc.*, 2021 WL 119303, at *3 (D.S.C. Jan. 13, 2021) (when plaintiff failed to disclose treating physicians as experts, court permitted them to provide testimony about their observations and course of treatment at the time they treated him, but not any opinions that they formulated based on scientific, technical or specialized knowledge after they treated plaintiff); *Ingram v. ABC Supply Co., Inc.*, 2010 WL 233859, at *3 (D.S.C. Jan. 14, 2010) (when plaintiff failed to disclose treating physicians as experts, court prohibited them from opining on "plaintiff's diagnosis, prognosis, and future medical needs [and restricted them] to providing testimony about their individual factual treatment of plaintiff, as such treatment is documented in the medical records").

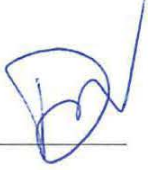
Plaintiff may introduce Dr. Guerette's bills only during Phase 2, the damages phase, but is prohibited from introducing them as evidence during Phase 1, the causation phase. The parties must submit two sets of jury instructions — one for each phase — in accordance with the deadlines set forth in the Court's Pretrial and Scheduling Order (ECF No. 8).

4. Ten (10) days after Defendant files the pleading described above, the parties must each file an offer of proof, including a list of witnesses and brief summary of the evidence that they plan to present, for each phase of the trial.

5. The Final Pretrial Conference in this matter is rescheduled for **July 15, 2022, at 2 p.m.**

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.


_____/s/_____
David J. Novak
United States District Judge

Richmond, Virginia
Date: May 3, 2022

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

**PLEADING AS ORDERED BY THIS COURT'S MAY 3, 2022 REGARDING LIABILITY
AND INJURIES**

COMES NOW, the Defendant, Nicholas James Desousa, by counsel and for his pleading as ordered by this Court's May 3, 2022 order regarding liability and injuries states as follows:

PRELIMINARY STATEMENT

1. By filing this pleading, Defendant is not waiving any objection to the Court's ruling on Defendant's Motion in Limine. Specifically, Defendant maintains his position that admitting any medical bills for Dr. Guerette's treatment is error as under *McMunn v. Tatum*, 237 Va. 558, 379 S.E.2d 908 (1989) when a Defendant objects to the introduction of medicals bills, indicating he has a substantial contest to the medical necessity and/or causation relation, the court may admit the bills only with foundation expert testimony tending to establish medical necessity and/or causal relationship. Defendant has objected to these bills under *McMunn v. Tatum* and Dr. Guerette is not permitted to offer any expert testimony. Further, Dr. Guerette's testimony is not relevant to any fact at issue if he cannot opine as to the causation of the conditions for which he provided treatment.

LIABILITY

1. Defendant admits that his negligence was the proximate cause of the accident sued upon.

INJURIES

1. At trial, the Defense will not contest that the Plaintiff sustained soft tissue injuries to her neck and back. Defendant will also not contest that Defendant sustained a head injury. Defendant is contesting all other claimed injuries. Specifically, Defendant disputes all of Dr. Guerette's treatment, including that Plaintiff sustained a pelvic prolapse, any damage to her Interstim, any injury to her bladder, pelvic pain, uterus etc. Defendant's position is that Plaintiff had made a complete recovery from all injuries sustained in the subject accident on or before September 8, 2019. The extent of the injuries, when she recovered, and the impact on her life will be left to the jury. There is evidence that as early as August 6, 2019, she was back doing strenuous work, which is evidence she was recovered from her soft tissue injuries. Defendant refers Plaintiff to his Supplemental Answers to Plaintiff's interrogatory number 26 for a detailed description of what is being claimed.¹ Defendant reserves the right to object to any of Dr. Camden's testimony to the extent it contains hearsay is not relevant or is beyond her expert witness disclosure.

NICHOLAS JAMES DESOUSA,
By Counsel

_____, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530

¹ If the Court wished to have a copy of the Supplemental Interrogatory, please inform counsel and the same will be provided promptly.

Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeeney@carterandshands.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 12th day of May, 2022, I will send via email the foregoing to counsel listed below and I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Samantha Cohn, Esquire (VSB# 89091)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
Richmond, VA 23235
Telephone: (804) 888-8888
Facsimile: (804) 355-9988
Scohn@mcdonaldinjurylaw.com
Counsel for Plaintiff

_____/s/_____, p.d.
Carter T. Keeney, Esquire (VSB# 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Telephone: (804) 747-7470
Facsimile: (804) 747-7977
ckeeney@carterandshands.com
Counsel for Defendant

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMANTHA ROOP,
Plaintiff

V.

Civil Action No.: 3:21-cv-00675-DJN

NICOLAS JAMES DESOUSA,
Defendant

**AMENDED ORDER OF PROOF AS TO
WITNESSES AND EVIDENCE**

COMES NOW Plaintiff, Samantha Roop, and presents to this Court her Order of Proof as required regarding her intended witnesses and the evidence they will submit at trial and sets forth as follows:

Plaintiff's Case in Chief

1. Samantha Roop:

- a. Phase 1: facts as to accident; causation as to injuries – neck, head, back, and pelvis; injuries themselves; experience of injuries; the absence of a fall from a horse; treatment by doctors for injuries attributed to accident including, but not limited to, Guerette, Alliance Physical Therapy, PCP, and ER visits; medical procedures endured as a result of the accident; life preceding accident and subsequent thereto; medical records; physical limitations and inabilities as a result of accident
- b. Phase 2: pain and suffering; medical bills; experience of injuries; life preceding accident and subsequent thereto; physical limitations and inabilities as a result of accident; injuries' impact on relationships

2. Dr. Guerrette:

- a. Phase 1: actual treatment of Plaintiff from 2011 to present; actual observations during said treatment; actual diagnosis during said treatment; Roop's gap in treatment; changes in patient throughout actual treatment; medical records; Plaintiff's condition prior to July 2019 and subsequent thereto
- b. Phase 2: bills/costs of Roop's treatment; statements by Roop regarding pain and suffering during treatment

3. Gerard Barton:

- a. Phase 1: Plaintiff's physical/emotional/mental conditions before and after the accident; Plaintiff's treatment before and after the accident; facts as to accident; medical appointments; treating physicians; Plaintiff's medical treatment received as a result of the accident; observations of Plaintiff's condition and injuries as a result of the accident; medical records; firsthand involvement in Plaintiff's treatment and recovery from injuries attributed to accident; physical limitations and inabilities as a result of accident
- b. Phase 2: observations of Plaintiff before and after accident – pain and suffering; Plaintiff's physical/emotional/mental conditions before and after the accident changes to Plaintiff's life from before and after the accident; physical limitations and inabilities as a result of accident; injuries' impact on relationships; medical bills

Rebuttal Witness

1. Samantha Roop or Dr. Guerette dependent on how cross-examination/defendant's case in chief is presented

SAMANTHA ROOP

By Counsel

/s/

Samantha Cohn (VSB# 89081)
Geoff McDonald & Associates, P.C.
8720 Stony Point Parkway, Suite 250
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Phone: (804) 888-8888
Facsimile: (804) 359-5426
Email: scohn@mcdonaldinjurylaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE ON THE FOLLOWING PAGE

JA220

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of May, 2022, I electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Carter T. Keeney, Esq. (VSB # 82275)
Carter & Shands, P.C.
9030 Stony Point Parkway, Suite 530
Richmond, VA 23235
Phone: (804) 747-7470
Facsimile: (804) 747-7977
Email: ckeeney@carterandshands.com
Counsel for Defendant

_____/s/_____
Samantha Cohn, Esquire

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SAMANTHA ROOP	)	Plaintiff,
)	
v.	)	Civil Action No.: 3:21-cv-00675
)	
NICHOLAS JAMES DESOUSA	)	Defendant.

OFFER OF PROOF AS REQUIRED BY THE ORDER OF MAY 3, 2022

COMES NOW, the Defendant, by counsel and for his offer of proof as ordered by this Court's Order of May 3, 2022 states as follows:

PRELIMINARY STATEMENT

1. By filing this pleading, Defendant is not waiving any objection to the Court's ruling on Defendant's Motion in Limine. Specifically, Defendant maintains his position that admitting any medical bills for Dr. Guerette's treatment is error as under *McMunn v. Tatum*, 237 Va. 558, 379 S.E.2d 908 (1989) when a Defendant objects to the introduction of medicals bills, indicating he has a substantial contest to the medical necessity and/or causation relation, the court may admit the bills only with foundation expert testimony tending to establish medical necessity and/or causal relationship. Defendant has objected to these bills under *McMunn v. Tatum* and Dr. Guerette is not permitted to offer any expert testimony.
2. Defendant maintains his position that Dr. Guerette should not be permitted to testify as absent being able to offer any expert testimony, his testimony is not relevant to any fact at issue.

3. As a preliminary matter, most of the Defendant's evidence will be based on his cross-examination and impeachment of the Plaintiff. Below, it what the defense anticipates bringing out from the witnesses below and/or from the referenced records. However, the exact evidence elicited will depend largely on the Plaintiff's case.

PHASE 1 EVIDENCE

1. **Samantha Roop:** Defense counsel intends to cross examine her regarding her claimed injuries and her prior medical history. Defense counsel will also cross examine her on her activities. If the Plaintiff is truthful, the defense may not need to call all of the witnesses listed below.
2. **Richard Gill, M.D. and/or the Custodian of Records at St. Frances Medical Center:** Dr. Gill treated Plaintiff at St. Francis Medical Center. His note indicates that Plaintiff has a history of abuse, anemia, anxiety, arthritis, bipolar disorder, chronic pain (on chronic opiates) Depression, GERD, interstitial cystitis, RA. He then will testify about her complaints from the auto accident and importantly that she denied abdominal pain. Roop Bates Stamp 779.
3. **Custodian of Records from CJW Medical Center:** On 7/15/19 Plaintiff went to the ER and reported history of chronic back pain which she sees a specialist for and takes oxycodone several times daily, but her back pain was worse since the accident. Plaintiff made no mention of pelvic pain and denied abdominal pain. Roop Bates Stamp: 707-708.
4. **Nathan Michels, PT, DPT, OCS, CSCS and/or Custodian of Records from Alliance Physical Therapy:** Nathan Michels was a physical therapist at Alliance Physical Therapy. As he is Plaintiff's treating medical provider, Defense cannot speak with him pursuant to

Virginia code section 8.01-399. It is anticipated he will testify consistently with the records from Alliance Physical Therapy, which were produced in discovery. Specifically, it is anticipated he will testify regarding Plaintiff's complaints and her lack of complaints for any pelvic injury. As evidenced by the records from Alliance Physical Therapy, Plaintiff was progressing well as she was in therapy. Defendant will also call the Custodian of Records for Alliance to Authenticate the records. Defendant anticipates offering at least the information listed below but reserves the right to offer additional evidence should the need arise.

- a. July 19, 2019, Plaintiff reported to her therapist that she works in an automotive repair shop and was out of work. She also reported she has arthritis and a lower back decompression fusion in 2011. Roop Bates Stamp 844.
- b. On August 6, 2019, she told her therapist that she had returned to work in her husband's auto repair shop. Roop Bates Stamp 854.
- c. On August 22, 2019, she stated she had no current headaches. Roop Bates Stamp 858.
- d. On September 6, 2019, she stated that working aggravated her left shoulder pain. Roop Bates Stamp 862.
- e. On September 12, 2019, Plaintiff reported 90% functional improvement. Also noted working full time in an automotive repair shop and that it was heavy duty. Roop Bates Stamp 866.
- f. On October 10, 2019, she reported continued pain in her left shoulder with heavy lifting and her last headache was 2 weeks ago. Roop Bates Stamp 882.

g. On October 16, 2019, Plaintiff reported full recovery with no headaches, back to activities of daily living, and independent activities of daily living with no concerns. Plaintiff stated she was ready for discharged and was pleased with her progress. She reported 0/10 pain and 100% improvement. Plaintiff reported a full recovery. Roop Bates Stamp 884-891.

h. a.-h. above is descriptive of the testimony to be elicited by the witnesses. However, in total, the evidence adduced will be that the Plaintiff made a good quick recovery, was back to strenuous activity relatively quickly, made no complaints of pelvic issues and aggravated her shoulder while working.¹

5. Dr. Teresa Camden and/or the custodian of records for Alliance Physical Therapy:

Dr. Camden was a medical doctor who saw the Plaintiff after the accident. She is Plaintiff's treating medical provider; Defense cannot speak with her pursuant to Virginia code section 8.01-399. It is anticipated he will testify consistently with her records, which were produced in discovery. It is anticipated she will testify that the Plaintiff has done pain management for her lower back since 2012 and normally takes Hydrocodone twice daily, did not complain of any pelvic or bladder issues, that she did not miss any days of work after her accident, that she helps her husband in his mechanic shop, she has a lifting requirement of 100 pounds with working on tractor trailers and larger vehicles. This is all referenced in the July 22, 2019, note from Dr. Camden's office. It is also anticipated she will testify that on September 9, 2019, Plaintiff stated that her shoulder was pain free until yesterday while riding her horse she states her horse dragged her across the field causing

¹ The records from Alliance Physical Therapy total approximately 41 pages. If the Court would like the same for review, please inform counsel of the same and the same will be provided.

pain. Plaintiff also reported on October 16, 2019, that she was completely recovered.

These records are Roop Bates Stamp 893-898.

6. **Dr. Nathan Guerrette, M.d.:** It is anticipated that the Defense will cross-examine Dr. Guerrette. It is anticipated that Dr. Guerrette will testify as to the following:²

a. Back in 2012 or 2013 he implanted a sacral nerve stimulator in the Plaintiff.

That the Interstim has a shelf life of five years. He will testify that she first

reported to his officer on October 8, 2019 with reports of worsening

incontinence. That there was a gap in is treatment from February 19, 2020

until December 4, 2020. *Repetitive heavy lifting can cause the issues Dr.*

Guerrette treated the Plaintiff for. Getting dragged through a field by a horse

could damage the Interstim.

PHASE 2 EVIDENCE

In phase 2, Defendant's evidence will be base don his cross examination of the plaintiff's witnesses.

NICHOLAS JAMES DESOUSA,
By Counsel

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Counsel for Defendant

² The defense will only ask about the subjects in italics if the Court holds that asking about the same does not open the door to Dr. Guerrette offering any expert opinion testimony regarding the causation of plaintiff's condition. The defense will ask the court for a ruling on these issues prior to asking Dr. Guerrette.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 20th day of May, 2022, I will I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Samantha Cohn, Esquire (VSB# 89091)
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil No. 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.

MEMORANDUM ORDER
(Clarifying Parameters of Testimony of Dr. Nathan Guerette)

This matter comes before the Court for pretrial management following a conference call with counsel on May 27, 2022, about the parameters of the testimony of Dr. Nathan Guerette. The Court previously granted in part Defendant's Motion *in Limine* to Exclude Dr. Nathan Guerette from Testifying at Trial, to Exclude Plaintiff's Medical Bills for Dr. Guerette's Treatment and to Exclude Any Mention of Any Condition Treated by Dr. Guerette (ECF No. 18). In its Memorandum Order (ECF No. 25), the Court prohibited expert testimony by Dr. Guerette as to the issue of causation and bifurcated the trial into two phases addressing: (1) causation as to the contested injuries, including injuries involving Plaintiff's pelvic and bladder areas; and, if and only if Plaintiff establishes causation to the satisfaction of the jury as to the contested injuries, (2) the treatment and related medical bills, along with pain and suffering, resulting from injuries arising from the car accident.

On May 12, 2022, Defendant filed a pleading (ECF No. 27) admitting liability and indicating that Defendant would not contest that Plaintiff sustained soft tissue injuries to her head, neck and back. The pleading, however, wrongly stated that the Court prohibited Dr.

Guerette from offering *any* expert testimony and, therefore, admitting the medical bills would offend the Virginia Supreme Court's holding in *McMunn v. Tatum*, 379 S.E.2d 908 (Va. 1989). But this position misunderstands the Court's ruling on the limits of Dr. Guerette's testimony.

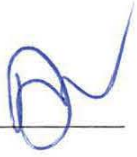
Again, Dr. Guerette may not provide expert testimony as to the cause of Plaintiff's injuries. However, Dr. Guerette may testify as Plaintiff's treating physician in both phases of the trial. During Phase One (addressing the issue of causation), Dr. Guerette may only provide testimony about his treatment of Plaintiff during the time period of 2011-13 and then the results of his examination when Plaintiff returned to him for treatment in October of 2019, including providing testimony on the functionality of her Interstim device before and after the accident at issue. To reiterate, Dr. Guerette may not provide any expert testimony about the cause of any injuries that he observed when he examined and treated Plaintiff in October of 2019.

If Plaintiff meets her burden during the first phase and the jury finds that the car accident caused or contributed to any of the contested injuries, the case will then proceed to the second phase, which will cover damages for undisputed injuries and those injuries on which the jury found in Plaintiff's favor on causation, if any. During Phase Two, Dr. Guerette may provide expert testimony as Plaintiff's treating physician as to the medical necessity of the treatment that he provided to Plaintiff beginning in October of 2019. The medical bills for this treatment can be admitted as evidence during this phase, based on Dr. Guerette's testimony as Plaintiff's

treating physician.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.


_____/s/
David J. Novak
United States District Judge

Richmond, Virginia
Date: May 27, 2022

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION

4 SAMANTHA ROOP)

5 v.)

6 NICHOLAS JAMES DESOUSA)

Civil Action No.:
3:21 CV 675

7)
8 July 12, 2022

9 COMPLETE TRANSCRIPT OF FINAL PRETRIAL CONFERENCE
10 BEFORE THE HONORABLE DAVID J. NOVAK
11 UNITED STATES DISTRICT COURT JUDGE
12

13 APPEARANCES:

14 Samantha B. Cohn, Esquire
15 Brandon K. Galindo, Esquire
16 GEOFF MCDONALD & ASSOCIATES, P.C.
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19 Richmond, Virginia 23235

Counsel on behalf of the Plaintiff

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Counsel on behalf of the Defendant

23
24 TRACY J. STROH, RPR
25 OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

(The proceeding commenced at 10:05 a.m.)

THE CLERK: Civil action 3:21 CV 675, *Samantha Roop v. Nicholas James Desousa*.

Representing the plaintiff, Samantha Cohn and Brandon Galindo.

Representing the defendant is Carter Keeney.

Counsel, are we ready to proceed?

MS. COHN: Ready, madam.

MR. KEENEY: Yes, Your Honor.

THE COURT: Okay. The way we're going to proceed here today is that you're going to keep your mask on until it's your turn to speak. When it's your turn to speak, you're going to come up to the lectern, remove your mask so the court reporter can hear you. When you're done speaking, you'll put your mask back on.

All right. We're here for the final pretrial conference. I want to go through a number of items to get us ready for the trial next week.

It looks like we're going to trial; is that right?

MS. COHN: Yes, Your Honor.

THE COURT: All right. Let's -- I want to first ask, Ms. Cohn, who is going to be sitting at your table?

MS. COHN: Your Honor, seated at the table --

THE COURT: I need you to take your mask off.

1 MS. COHN: Seated at the table, Your Honor, will
2 be Brandon Galindo and the plaintiff, Ms. Roop, as well as
3 myself.

4 THE COURT: Okay.

5 All right. And, Mr. Keeney, who's going to be
6 at your table?

7 MR. KEENEY: Just myself and my client is my
8 current understanding, Your Honor.

9 THE COURT: So Mr. Desousa is going to be here?

10 MR. KEENEY: Mr. Desousa is going to be here,
11 yes, sir.

12 THE COURT: So when you say your client, you're
13 really representing the insurance company.

14 MR. KEENEY: No, sir.

15 THE COURT: Oh, you got Mr. Desousa?

16 MR. KEENEY: He's my client.

17 THE COURT: Okay. That's fine. All right. I'm
18 glad I asked that.

19 MR. KEENEY: No, there should be no mention of
20 State Farm, Your Honor.

21 THE COURT: Of course, not.

22 MR. KEENEY: Right.

23 THE COURT: I'm not going to do that. I'm just
24 trying to figure out who's going to be sitting there.
25 That's all.

1 MR. KEENEY: There was some question as to
2 whether or not Mr. Shands would appear, but I think he's
3 booked himself into other things. So it's all me.

4 THE COURT: Oh, I think you can handle this.

5 Okay. All right. No paralegals?

6 MR. KEENEY: No, Your Honor.

7 THE COURT: Okay.

8 Same for you, Ms. Cohn?

9 MS. COHN: Not at the table, Your Honor.

10 THE COURT: All right. Okay.

11 All right. I want to go through a couple issues
12 here first. On stipulations -- Mr. Keeney, do you want to
13 come up to the lectern --

14 MR. KEENEY: Yes, Your Honor.

15 THE COURT: -- because I really want to ask you
16 this?

17 So I looked at your stipulations, and the one
18 thing I noticed is this. You don't have a stipulation as
19 to damages as to the undisputed injuries. And I wonder if
20 it may make -- it seems to me that's an identifiable
21 number other than pain and suffering, right?

22 MR. KEENEY: There's a portion of that that is,
23 Your Honor. And here's where it gets wishy-washy.

24 During the course of her physical therapy
25 treatment, within the records there are some notations in

1 there about her doing things that aggravate her condition,
2 such as lifting things. Obviously, we have the horse
3 incident, and then she continues treating with physical
4 therapy after that.

5 So when exactly Alliance Physical Therapy would
6 get cut off, really, that's up to the jury. As far as --
7 I believe it is the two initial ER visits and the
8 beginning of physical therapy. That is not in dispute.
9 Ms. Cohn and myself have not come up with what that
10 specific number is at this point, Your Honor.

11 THE COURT: All right.

12 MR. KEENEY: I'm not disputing those bills. We
13 just haven't done the math within our stipulation. And I
14 think within the stipulation, number 4 through 9 indicate
15 that we agree that the treatment referenced in those
16 stipulations was medically necessary to treat the injuries
17 and the cost was reasonable and -- everything that allows
18 the plaintiff to recover for this.

19 THE COURT: Okay. I want you to think about
20 what my question -- why I'm asking this question --

21 MR. KEENEY: Uh-huh.

22 THE COURT: -- before you give me your next
23 answer. Okay?

24 MR. KEENEY: Okay.

25 THE COURT: I'm going to try to explain to you

1 what I'm thinking. Okay?

2 It seems to me one of three things are going to
3 happen at trial. Particularly, I just read your trial
4 memos. That's why I was running a little bit late here.

5 So the jury is going to get the issue of
6 causation. Okay. Particularly focusing on the pelvic
7 prolapse. They could find for you. Okay. And then the
8 only issue -- and to me, this is, at best for them, a
9 50/50 chance on that. I'm letting the jury decide it,
10 though. I'm not taking it away from them, right?

11 As I understand it, what their evidence is going
12 to be is she's going to testify, "I had this issue before
13 back in 2011, 2013. I had this device put in me. The
14 device was fine. I had this accident. Now I got issues.
15 It had to come from the accident." Right?

16 And you're going to come back and say, "We have
17 no idea if that's what caused it, and by the way, she has
18 all these other issues. She fell off a horse. She was
19 lifting stuff. Nobody knows. It would be pure
20 speculation."

21 That's essentially the trial, right?

22 MR. KEENEY: Yes, sir.

23 THE COURT: The first phase. Okay. If the jury
24 comes back in your favor, we got no issues. We're just
25 going on the pain and suffering from the -- these --

1 really, the undisputed injuries. There might be a
2 question about how far those go, but that's miniscule.

3 MR. KEENEY: Correct.

4 THE COURT: Okay. Option two is jury comes back
5 in her favor. Okay. We then go to the jury. And we're
6 going to the jury really on two issues, in my mind. The
7 undisputed injuries and the disputed injuries. Okay?

8 Now, you say there's a little bit of a twist on
9 the undisputed injuries in terms of how far the physical
10 therapy went. That's what you just said right now.

11 MR. KEENEY: Correct.

12 THE COURT: But then you're also -- you're going
13 to file a motion for judgment without regard to the
14 verdict afterwards, right? Your Rule 50 motion no matter
15 what, right?

16 MR. KEENEY: Well, and that was one of the
17 questions I had for the Court. Obviously, if I lose, I
18 will do that.

19 But at some point during trial, my position
20 is -- I think the Court is clearly aware -- is that while
21 she can say she injured these parts, under *McMunn* --

22 THE COURT: I understand.

23 MR. KEENEY: Right. But my question is when
24 would the Court like me to renew that?

25 THE COURT: Why don't you just hear me out for a

1 second --

2 MR. KEENEY: Okay.

3 THE COURT: -- and then I think we'll all be in
4 better shape.

5 Even if she prevails in the first phase and the
6 jury then awards the damages, I'm going to allow you to
7 file a motion under Rule 50. Okay? And I'm going to look
8 at it again as a matter of law whether or not it's
9 sufficient, right?

10 I think the jury should make the determination
11 first, right? And then I -- I don't even know what the
12 evidence is. I just -- I'm speculating based upon what
13 you all have told me. But you would have a -- you're
14 going to have a full opportunity -- because I think this
15 is a tight legal issue here, okay, if she prevails. All
16 right. Now, if she doesn't prevail, there's no legal
17 issue, right?

18 But what I'm saying to you is this. So what if,
19 after the verdict -- let's say they award -- I'm just
20 making up numbers -- 50,000 for the undisputed and they'd
21 have 500,000 for the disputed and then I grant your motion
22 for judgment notwithstanding the verdict, right?

23 How do I -- the verdict form that you have given
24 me lumps them all together. We would have to have another
25 trial. Okay?

1 Now, I'm going to do a different verdict form to
2 try to deal with that. But it seems to me the wiser move
3 here is for you to stipulate to the broadest reasonable
4 sense that you can as to what the damages are on what are
5 the undisputed injuries and then tell that to the jury.
6 Okay. This is -- this is the damages that they're
7 entitled to for the head, the neck, all the soft tissue
8 injuries, right?

9 I would then have a separate answer as to what
10 is the pain and suffering attributed to that alone.

11 And then what is the damages, the medical
12 expenses that you attribute to the pelvic prolapse, and
13 what is the pain and suffering there.

14 I'm not going to allow them to do futures.
15 We'll get to that here in a second.

16 But the -- but my point to you is I think the
17 wise move is -- because you're really fighting about the
18 pelvic prolapse. If it wasn't for that, you would have
19 settled this case. Do you know what I'm saying to you?

20 MR. KEENEY: Correct.

21 THE COURT: So why don't you all -- so we don't
22 have to try this case a second time -- because if I would
23 rule in your favor on the Rule 50 motion, I'd have to go
24 back and have another trial on damages. We're going to be
25 doing this thing all over again, right, which seems to me

1 to be quite silly and a waste of money.

2 And, of course, the third option is I could deny
3 your motion. But we would have a verdict form that you
4 could then appeal -- you would want to do that to --
5 you're going to appeal me if you lose on this. Because
6 you're so in love with *McMunn* that I'm sure that you want
7 the Fourth Circuit to review that, right? And I think
8 it's a sizable amount of money such that your client would
9 want to appeal it, right?

10 It seems to me the wiser move is to get into the
11 weeds and break down what the damages are. And we're
12 going to do that no matter what. But since -- to your
13 credit, you're not fighting the liability on what I'm
14 calling the soft tissue injuries. Why don't you all sit
15 down and stipulate to what that number is. It doesn't
16 include pain and suffering. We'll let them decide that.

17 Of course, I'll change the verdict form if the
18 jury comes back in your favor. But I'm playing this out
19 worst-case scenario because that's what my job is, right?

20 Do you understand?

21 It seems to me to be a lot more -- makes a lot
22 more common sense to do that, to have an additional
23 stipulation on just damages.

24 If you want to stipulate also to what the pain
25 and suffering would be also, that would be fine. I don't

1 think you want to. But we could have that line, right?

2 Do you want to ponder this?

3 We're going to have another final pretrial
4 conference, by the way, next week because the exhibit list
5 is not acceptable here.

6 What I normally do for a final pretrial
7 conference is I normally have everything done by now. The
8 exhibit list -- particularly Ms. Cohn's exhibit list -- is
9 not cutting it. We're going to have to redo some things.

10 I'm going to redo some of the jury instructions.
11 I'm going to take your agreed instructions, but there's
12 more things that we have to put in there. Okay? I'm
13 working on that today.

14 I'm going to give you all -- I'm going to give
15 you everything I'm going to say to the jury. But it would
16 be helpful to me to know this answer on whether you're
17 willing to stipulate to the damages. And I can modify it
18 afterwards, right, if you want, but --

19 MR. KEENEY: Your Honor, we can come up with a
20 number for the treatment that I referenced -- or that are
21 referenced in the stipulation of facts. Whatever that
22 total is, I can do the math on that and let the Court
23 know.

24 I think special verdict forms are disfavored at
25 law.

1 THE COURT: No, they're not. Not -- no, they're
2 not. Not here they're not. Maybe in state court.

3 MR. KEENEY: In state court --

4 THE COURT: The problem is you want to try this
5 case -- you're both struggling because you're state court
6 practitioners and you keep viewing it that way.

7 You're in federal court. We apply the federal
8 rules. So that's the way this rolls.

9 MR. KEENEY: Yes, Your Honor.

10 I'll try to come up with that number. I mean
11 that --

12 THE COURT: Well, you have to get with her.

13 But what I'm saying to you is if you're going to
14 try to parse it and say, well, hey, I want to fight about
15 this additional physical therapy, that's not going to
16 work. I'm going to tell you that right now, if that's
17 what you're going to do. It can't be much money.

18 It seems to me this whole case is about the
19 pelvic prolapse. If you want to fight about it, you can.
20 And I'm going to do a detailed special verdict form on
21 everything, and we'll let the jury decide that.

22 Because I have to say to myself, what if I word
23 it to grant your motion post trial? This is a -- this is
24 going to be a tough issue. You know, I don't know if
25 she's going to sustain her burden in front of the jury.

1 But if she does, I want to look at what that evidence
2 looks like in relation to the law. I'm going to give you
3 a chance to brief it. I'm going to give her a chance to
4 brief it. It seems to me if she hits it, she's hitting it
5 big, you know. I don't know if she is going to hit it,
6 but I'd want to know what those numbers are.

7 Does that make sense to you?

8 MR. KEENEY: Yes, sir.

9 THE COURT: So why don't -- when we're done, why
10 don't the two of you huddle. And if you can file
11 something, try to get it in by tomorrow. If you cannot
12 agree, which is your prerogative -- I can't make you
13 stipulate, okay -- just e-mail my law clerk and say we
14 couldn't reach an agreement. Don't say anything else
15 other than that, just so I know what the deal is.

16 But you're going to see, hopefully by tomorrow,
17 certainly no later by -- I'll tell you what. I'm going to
18 wait until Thursday until I hear from you because I might
19 change the jury instructions.

20 You'll get the jury instructions no later than
21 Thursday. Okay? But I'd like to see what you guys
22 decide. Does that make sense?

23 MR. KEENEY: Yes, sir.

24 THE COURT: Ms. Cohn, did you want to say
25 anything about that point or not? With your mask off.

1 MS. COHN: No, Your Honor. I think Carter and I
2 are of the same opinion that --

3 THE COURT: We're going to call him Mr. Keeney
4 around here.

5 MS. COHN: Mr. My apologies.

6 THE COURT: I've got to get you ready for
7 federal court. You're struggling here a little bit.

8 MS. COHN: Mr. Keeney and I are of the same ilk
9 that there is the discrepancy. But I do understand
10 completely what Your Honor is saying regarding the
11 stipulation to that miniscule amount versus the amount
12 potentially to come for the prolapse issue.

13 THE COURT: Why don't you essentially reach a
14 settlement on that point? Do you know what I'm saying to
15 you?

16 You could agree -- you could go halfway in
17 between the number and agree amongst yourselves and we
18 take that away from the jury, leaving just pain and
19 suffering on that point. And then we come back and let
20 them find what this is really about, the pelvic prolapse.

21 That's what I think you should do. But you
22 talk, get back to us by tomorrow, okay, and let us know.

23 MS. COHN: Thank you.

24 MR. KEENEY: Thank you, Your Honor.

25 THE COURT: All right.

1 Ms. Cohn, do you want to come on up to the
2 lectern?

3 So your exhibit list is just not cutting it.
4 It's just not the way we do things around here.

5 Essentially, what you did is you gave me your
6 discovery list. That's not the way we do it. Here's what
7 you have to do. You're going to give -- both of you are
8 going to redo this. You're going to give me two exhibit
9 lists, one for liability and one for damages. Your
10 exhibits are going to be on both of them. Then you're
11 going to give me a binder with the exhibits in them. It's
12 going to be what is going to go to the jury so I can look
13 at them in advance.

14 You're going to redact out all the hearsay.
15 You're going to redact out all the personal identifiers,
16 like her date of birth, for example. Anything that's not
17 relevant in the medical records has to be taken out.

18 Now, exhibit lists around here, okay, is you
19 identify the specific exhibit. So picture of horse on
20 June 1st. Okay? So it's not -- you're just, like, giving
21 broad descriptions of stuff. That's not what we're doing
22 here.

23 So what you're going to do is this. It's going
24 to be -- I think we e-mailed you a sample. But column 1
25 is exhibit number. Okay? The first set of exhibits are

1 all going to start with a P. P for plaintiff. P1, P2,
2 P3. Okay. When you're done with yours, the next ones are
3 D1, D2, D3, D4. Okay? So forth.

4 Category 2 is a very short description of what
5 the item is. Okay? If you want to put the Bates
6 number -- I think, Mr. Keeney, you had Bates numbers --
7 you can put it in parentheses around the description if
8 that helps you.

9 You have to remember, I'm sending to the jury
10 the exhibit list. I'm sending to the jury the
11 stipulations, right? You want that. You want them to
12 know what they're doing so that they can leaf -- and
13 they're going to have a copy of the exhibits in there with
14 them, right?

15 So it's essentially a guide to them that, hey, I
16 want to look at that picture of that horse again. What
17 number is it? Do you understand what I'm saying to you?

18 MS. COHN: (Nodding head.)

19 THE COURT: If you want to put the Bates number
20 in there, I don't care. You don't have to. That's for
21 your benefit, not mine. Okay.

22 Column 3 is -- the title of that column is
23 sponsoring witness or stipulation. If it's a -- if it
24 relates -- this is who's going to -- who is going to
25 authenticate based on whose testimony is that exhibit

1 going to be admitted, right?

2 Essentially, your case is down to three people,
3 right?

4 MS. COHN: Correct.

5 THE COURT: You've got Ms. Roop, her boyfriend,
6 and the doctor, right?

7 MS. COHN: Correct, Your Honor.

8 THE COURT: Okay. But you also have
9 stipulations. So let's say you want to introduce medical
10 records. Okay?

11 The medical records are broken down by day, by
12 treatment, right? It's a set. It's not like all the
13 medical records from St. Mary's at one time. Do you know
14 what I'm saying to you?

15 MS. COHN: Absolutely, Your Honor.

16 THE COURT: So if she's treated on July 9th,
17 it's those specific medical records for July 9th have
18 their own exhibit number. Okay?

19 So if they're going to be admitted via
20 stipulation, you type in stipulation number. So, for
21 example, stipulation number 9. I'm just making this up.
22 Do you know what I'm saying to you?

23 MS. COHN: Absolutely, Your Honor.

24 THE COURT: All right. And then the last column
25 is admitted or denied. Now, normally, we put in there the

1 date for it to be admitted or denied, but we're trying
2 this case in one day. That's what you all told me. I'm
3 not sure we're going to make it here with two openings and
4 two closings for each, but that's what we're going to do.
5 And that allows me, and most importantly my staff, to
6 check off if I allow it to be admitted or not, right?

7 And then if it's -- if it's stipulated to, it's
8 automatically admitted. You can just put a check box in
9 already. Do you know what I'm saying to you? Otherwise,
10 you leave that open. Okay? But I need you to redo your
11 exhibit list.

12 Mark every one of your exhibits separately. You
13 all are going to have a meet and confer no later than
14 Thursday. You're going to file, on Friday, a new exhibit
15 list. Both of you. Okay? It's a combined exhibit list.
16 Exhibit list 1 is for liability. Exhibit list 2 is for
17 damages.

18 Now, every -- every exhibit that is admitted
19 during phase one is automatically then going to be carried
20 to phase two. But my point is this is what I'm giving the
21 jury. So when they go deliberate on phase one, I'm going
22 to give them the phase one exhibits. When they go to
23 deliberate on phase two, I'm going to give them both phase
24 one and phase two and all the exhibits from both. You got
25 that? So you don't have to replicate on the exhibit list

1 for phase two what you've already written on phase one.

2 Does that make sense to you?

3 MS. COHN: Absolutely, Your Honor.

4 And unfortunately, my paralegal was out with
5 COVID when everything was due. Carter and I have since
6 exchanged proper exhibits. And getting your list in
7 yesterday, we've actually reworked it just for our
8 portion. And that should have been submitted to you
9 already, but I will go back and make a combined one with
10 Carter.

11 THE COURT: Okay. We're going to redo them.

12 MS. COHN: Mr. Keeney.

13 THE COURT: But I want to make sure you're doing
14 it the right way here, because what you gave me is not
15 appropriate. Okay?

16 MS. COHN: I completely understand, Your Honor.

17 THE COURT: Okay. So we gave you a sample so
18 you know what to do, right?

19 And you're going to break it down. Each item is
20 going to have an exhibit number, and then you're going to
21 make -- you need to make a book for me. Okay? And you
22 need to have a set for the jury as well, right? So --
23 now, do you want to publish them over the television or do
24 you want them to have a hard copy?

25 Because, you know, in the jury -- I don't know

1 if you know this. In the jury box, they each have their
2 own monitor. How are you going to do this?

3 MS. COHN: We have the tech walk-through next
4 week. So I honestly hadn't given much thought about the
5 electronic version. However, if they each have their own
6 monitor, that might be the easiest way to go so it's not a
7 whole bunch of paper shuffling around.

8 THE COURT: Okay. But you said you're not going
9 to have a paralegal sitting at your counsel table, right?
10 So who's going to run all this?

11 MR. GALINDO: Your Honor, I'll be running
12 technology from counsel table.

13 THE COURT: You're Mr. Galindo?

14 MR. GALINDO: Yes, Your Honor.

15 THE COURT: Okay. All right. That's fine.

16 I'm going to make a suggestion to you. I have a
17 feeling that this is not going to go the way that we all
18 are hoping. You might want -- we're going to have seven
19 jurors. Okay? I suggest you make ten books. Okay?

20 MS. COHN: Okay.

21 THE COURT: One for me. One for each of the
22 jurors, right? One for the witness. That gets us to
23 nine. Actually, make 11. And then one for my law clerk,
24 and then one for my courtroom deputy. Okay?

25 MS. COHN: Better safe than sorry. Tech never

1 works when you want it to.

2 THE COURT: Better safe than sorry. You don't
3 want me blowing a blood vessel here in the middle of this
4 trial. We want to go in nice and clean. If you want to
5 show something on the monitor, I'm fine with that.

6 MS. COHN: Okay.

7 THE COURT: I will tell you, the way this really
8 works, when it gets to reading print on stuff -- I don't
9 know if that's at issue here in this case. But if you
10 want them to read something specifically in medical
11 records, it's really difficult to see it on the monitors.

12 Mr. Galindo, there's a way to do that. My
13 courtroom deputy will show how you to do it. You bring it
14 out.

15 You too, Mr. Keeney.

16 But it seems to me that the book is the way to
17 go. Now, if there is an exhibit that is in dispute, we
18 can't put that in the book, right? So if you're fighting
19 over an exhibit, leave that out of the book, and we'll
20 just have to deal with it at trial. Okay?

21 MS. COHN: Thank you, Your Honor.

22 THE COURT: All right. So you know what you're
23 doing? This is important to me.

24 MS. COHN: Yes, Your Honor.

25 THE COURT: Because you're kind of off the rails

1 a little bit. Do you know what you're doing?

2 MS. COHN: I'm back on the rails.

3 THE COURT: You're back on the rails.

4 All right. Mr. Keeney, do you know what you're
5 doing?

6 MR. KEENEY: Yes, Your Honor. Mine is already
7 drafted. I spoke with Ms. Cohn after --

8 THE COURT: All right. Let's talk about the
9 objections here, then, to the witness list and exhibit
10 list while you're there.

11 Do you need your notes or anything?

12 MS. COHN: No, Your Honor. I do believe for
13 his -- for Mr. Keeney's exhibit list, there were a couple
14 corrections to an ER record that we've agreed to, and he
15 has since redacted them.

16 THE COURT: Okay.

17 MS. COHN: So the filing was more to preserve
18 the objection should it be necessary, but it does not seem
19 to be necessary any longer.

20 THE COURT: Well, I'm more worried about his
21 objections to yours. So you have not designated any
22 discovery to be used as an exhibit.

23 MS. COHN: We've exchanged and he has agreed to
24 pictures of the motor vehicles, both the defendant's and
25 the plaintiff's, as well as medical records as authentic,

1 not -- we've preserved objections to the medical records
2 for other reasons, such as hearsay and whatnot. However,
3 the records as to the Intimate Wellness Institute and
4 Chippenham regarding the surgeries he has agreed to allow
5 me to enter.

6 THE COURT: He's saying no. He's shaking his
7 head no. Why don't you stand up and take your mask off
8 and say --

9 MR. KEENEY: No, Your Honor. Our agreement was
10 we didn't need to bring any custodians of records.
11 Dr. Guerette is going to be here live, and he can testify
12 as to what's in there and --

13 THE COURT: All right. Here's what we're going
14 to do. Okay? Because normally, I'm ruling on this, but I
15 don't have the exhibits because I don't have your
16 exhibits. So here's what we're going to do.

17 You're going to file your exhibit list on
18 Friday. You're going to meet and confer by Thursday. We
19 are going to have another final pretrial conference next
20 week. We're going to do it on Tuesday.

21 I think you're scheduled to come over here at,
22 like, 2:30, or something like that, for the tech thing; is
23 that right?

24 MR. KEENEY: 3:30, Your Honor.

25 THE COURT: So are you available at noon?

1 MR. KEENEY: Your Honor, I have another federal
2 pretrial conference in Alexandria at 10 a.m. I'm --

3 THE COURT: All right. We'll do it at 4:00.

4 MR. KEENEY: Well, Your Honor, I'm -- I may be
5 out of the case by then. I've submitted everything. I
6 just need the Court to sign an order. I submitted it on
7 Sunday, the motion.

8 THE COURT: What are you talking about? You're
9 talk about the Alexandria case?

10 MR. KEENEY: Yes, sir. Yes, sir. So that
11 hearing may go away for me.

12 THE COURT: What time do you want to do it on
13 Tuesday? That's what I'm asking you.

14 MR. KEENEY: We can do 4:00.

15 THE COURT: I'll tell you what. Let's do this.
16 Hold on one second. We're going to say 3:30. We'll do
17 the final pretrial conference. I'll leave the bench, and
18 then you can do with the tech walk-through with
19 Ms. Garner. Does that make sense?

20 MS. COHN: Works for me, Your Honor.

21 MR. KEENEY: Yes, Your Honor.

22 THE COURT: Okay. So here's what we're going to
23 do, just so we're all on the same page. You, then, are --
24 after you file the exhibit list, you're each going to file
25 a pleading. If you object to the admission of one of the

1 exhibits of each other, on Friday you're also going to
2 file a list and what the objections are so I can
3 understand what's in dispute and what's not. We should
4 have been doing this today, but we're off the rails.

5 We're going to get back on the rails. You're
6 going to meet and confer so I know exactly what's in
7 dispute. You're going to tell me why. It sounds more
8 like you're disputing her exhibits.

9 MR. KEENEY: Your Honor, if I may. Part of it's
10 I was never given any exhibits.

11 THE COURT: We're past whose fault it is. I've
12 got a trial next -- I blocked out one day for the trial.
13 One day for jury selection. We've got to get this stuff
14 done, right?

15 MS. COHN: Yes, Your Honor.

16 THE COURT: So you're going to meet and confer
17 by Thursday. You're going to file your exhibit list.
18 You're going to give me the exhibits so I can look at
19 them, too, and you're going to tell me what the objections
20 are as to each other's. And we're going to go over those
21 next Tuesday. Okay?

22 Now, I have the list so far of what the
23 objections are, and -- so on the medical records, which
24 first is identified as Exhibits 1 and 14, you know,
25 hearsay has to come out. If there's opinions of

1 undisclosed experts, they need to be removed.

2 I don't know what the collateral source
3 information is, but you can tell me about that.

4 And -- now, the diagnosis -- well, it depends on
5 what the diagnosis is. They can't say what the causation
6 is for number 1.

7 MS. COHN: Correct.

8 THE COURT: So you'll have to discuss that.
9 That should -- the other stuff should all be redacted out.

10 Now, Exhibits 2 and 3. There's no medical bills
11 going into --

12 MS. COHN: Part one.

13 THE COURT: -- phase one, right?

14 MS. COHN: Correct, Your Honor.

15 THE COURT: Okay. All right.

16 MS. COHN: I'm very clear that the pain and
17 suffering and any financials are for phase two.

18 THE COURT: Okay. And that includes the
19 statement of damages.

20 What's Exhibits 4 and 13? What are those?

21 MS. COHN: Well, correct. Your Honor, I'm
22 sorry. Can I grab my laptop?

23 THE COURT: Yeah, sure.

24 MR. KEENEY: Your Honor, it's the demonstrative
25 of the statement of damages. And that's fine for phase

1 two for what is --

2 THE COURT: Okay. All right. That's fine.

3 MS. COHN: Thank you, Mr. Keeney.

4 THE COURT: Okay. So that's only phase two.

5 All right. Exhibits 5 and 6, they're horse
6 records. What are horse records?

7 MS. COHN: There are none, Your Honor. We were
8 not able to procure them. Therefore, they were not shared
9 with the defense, and so it would not be fair to attempt
10 to introduce them.

11 THE COURT: Okay. So they're out. Okay.

12 What's Exhibits 7 and 8? It said -- they say
13 you didn't identify it under the order. What is that?

14 MS. COHN: Your Honor, if I may make this a
15 little bit easier. I know this was kind of like a grab
16 bag/kitchen sink situation, and I do apologize for that.

17 Moving forward, again, Your Honor, I have shared
18 with Mr. Keeney the plans to introduce simply pictures of
19 the vehicles. You know, the medical records were
20 discussed. The bills were discussed for phase two.

21 We did exchange -- I understand that he is still
22 disputing Guerette's bills and whatnot. Those can be
23 testified to by Guerette, who will be here. However, it's
24 going to be very --

25 THE COURT: He can't testify about that during

1 phase one. Only phase two.

2 MS. COHN: Correct. But his records he can
3 testify to in phase one as long as there's no causation or
4 opinion or anything of that nature.

5 So going through this, Your Honor, I will admit,
6 off the rails. Not going to necessarily be very
7 purposeful in this hearing now.

8 I will get my cleaned up exhibit list to
9 Your Honor. Make it very clear what's going to come in
10 and clearly denote and mark everything so we can have a
11 fruitful and educated discussion about it moving forward.

12 THE COURT: Okay. But while we're here, though,
13 I want to address some of this stuff. I don't know what 7
14 and 8 is. It sounds like that's something you're still
15 talking about.

16 Virginia code sections. That doesn't come in.
17 We don't put that in.

18 MS. COHN: No, Your Honor.

19 THE COURT: Deposition transcripts. There's
20 been no designations. So they're not coming in.

21 You can use them to impeach. Either side can
22 use to impeach. So if there's a deposition, you can
23 impeach the other side. Okay?

24 MS. COHN: Your Honor, the defense has no
25 witnesses that I'm aware of. So therefore, I would not

1 have any need for any deposition because there would be no
2 impeachment.

3 THE COURT: Okay. But he can.

4 MS. COHN: Absolutely.

5 THE COURT: Right. Okay.

6 Sixteen was just all medical, work records.
7 You're going to work through that.

8 Eighteen and 19 is pleadings and discovery.
9 That's not coming in.

10 And then you've just renewed your objections to
11 Dr. Guerette. You've objected so many times. You've
12 covered your basis. Okay?

13 And I'm also telling you, you're going to get a
14 chance on Rule 50 if you were to lose. Okay?

15 MR. KEENEY: Yes, Your Honor.

16 THE COURT: All right. On defense exhibits, the
17 surgical history thing, you've resolved that? Is that
18 what you're saying? Have you resolved all your objections
19 to his exhibits?

20 MR. KEENEY: Yes, Your Honor. I've got a
21 redacted stack.

22 MS. COHN: Correct, Your Honor.

23 THE COURT: Okay. So that's fine.

24 All right. So you know what to do on exhibits.
25 So you'll fix that. You'll file them on Friday. If

1 there's exhibits in contest yet, the objecting party has
2 to file something on Friday saying which ones you object
3 to and why you object so I can look at it before Tuesday.

4 And you're going to deliver this book, at least
5 one book to me, on Friday. You can make the other ten
6 copies by next week if you want.

7 Okay. Let's talk about jury instructions. As I
8 understand it, the only instruction in dispute is as to
9 future damages. To me, you haven't noticed up an expert
10 and you haven't -- there's no basis for it. Why is it
11 that you would be able to -- just saying she's got an
12 appointment in the future is not going to cut it.

13 MS. COHN: Your Honor, the case law that I
14 provided to the Court -- and I do have an additional copy
15 for you here, should I be able to submit it -- clearly
16 says, in multiple Virginia Supreme Court cases, that
17 plaintiffs were testifying that they were still under
18 active treatment with physicians, and based on that, the
19 instruction was proper in order to introduce any
20 reasonable expected medical expenses in the future.

21 In this case -- and in those cases, Your Honor,
22 I do apologize. It was through the plaintiff. It was not
23 through an expert. Also, there are cases where it was
24 through the treating physician as a lay witness describing
25 the current pain that they were still in at the time of

1 trial.

2 THE COURT: Did you give notice of that, though,
3 in discovery?

4 MS. COHN: In number 19, Your Honor, the answer
5 to any future medical, Ms. Roop specifically stated that
6 she has reevaluations after the bladder surgery and it has
7 been discussed that she will need a hysterectomy moving
8 forward.

9 THE COURT: Hold on a second, though. But
10 that's just -- being discussed, that's speculative.
11 That's what your issue is.

12 What the case -- this is where he's actually
13 right about *McMunn* and then the western district case of
14 *Rice v. Williams*, which is you have to have expert
15 testimony saying it's medically necessary. And you don't
16 have that here.

17 MS. COHN: Your Honor, the hysterectomy was
18 simply a statement that was part of the answer. I
19 understand we cannot seek the hysterectomy. That's
20 totally speculative. That's total conjecture.

21 However, it has been stated to Ms. Roop, which
22 under 701 and 803 for the Rules of Evidence, she can
23 testify as to Guerette's recommendations and statements as
24 to necessary treatment for the symptoms that she's
25 currently experiencing.

1 THE COURT: How is that not hearsay?

2 MS. COHN: Your Honor, 803 says that "a
3 statement made for medical diagnosis or treatment and is
4 reasonably pertinent to a medical diagnosis or treatment
5 and describes medical history, past or present symptoms
6 and sensations and their inception or their general
7 cause."

8 THE COURT: That's from the treated person to
9 the doctor, not the doctor opining about what's necessary.
10 I'm going to rule against you on this.

11 MS. COHN: Okay, Your Honor.

12 THE COURT: I'm precluding any future damages
13 under *McMunn* and *Rice*. So I'm ruling in favor of the
14 defense on that.

15 All right. So he, Dr. Guerette, I should say,
16 can testify in phase one -- and we're going to make sure
17 we have these parameters down. In phase one, he can
18 testify, "I treated her back in" -- that he treated her
19 back in 2011, 2013. Whatever her physical issues were, he
20 implanted this InterStim device. It was fine. You know,
21 she was fine. He didn't see her again until October 2019.
22 He -- at that time, he performed an evaluation of her, and
23 this is what was wrong with her. He can't say why.

24 MS. COHN: Correct.

25 THE COURT: That's the limit of his testimony on

1 phase one.

2 Now, in phase two, if, and only if, the jury
3 comes back in your favor as to finding causation on the
4 pelvic prolapse issue, he can then say what the treatment
5 was that he has given to this point to treat those
6 injuries. That's it. He cannot opine for the future.

7 And, of course, he can -- the bills will come in
8 based upon what he -- he has to be able to opine, though,
9 that it was medically necessary, the treatment -- which
10 I'm sure he's going to say the treatment that he gave her
11 was medically necessary. Assuming he says that, those
12 bills come in, but not future bills.

13 Do you understand the limits?

14 MS. COHN: Just for clarification, Your Honor,
15 for phase one, the October 2019 visits to present day,
16 Guerette -- is Guerette allowed to discuss the diagnosis
17 and his observations? Not causation. Simply what he
18 observed and what he treated her for, but not the
19 treatment itself or the amount of visits or bills or
20 anything of that nature.

21 THE COURT: He can only testify to his
22 observation and her need for treatment. What treatment
23 happened doesn't really matter at that point, right?

24 Because phase two he's going to say, "Okay.
25 This is the treatment that I gave after that. After I saw

1 the" -- I guess he's going to say the InterStim device
2 wasn't working. Is that what he's going to say?

3 MS. COHN: It malfunctioned consistent with
4 damage due to physical force.

5 THE COURT: Well, he can't say that. He cannot
6 say that. He can only say it was not functioning. He
7 can't say -- he can't opine that it was due to physical
8 force.

9 MS. COHN: Your Honor, it's not an opinion.
10 It's the programming that we're going back to, when he's
11 reading the programming.

12 THE COURT: What do you mean? I'm not
13 understanding.

14 MS. COHN: So this was brought up, Your Honor,
15 in my memo of fact from Guerette, which is the difference
16 between how he knew it was malfunctioning versus how it
17 was -- Carter's argument that -- Mr. Keeney's argument
18 that it's expired.

19 So, Your Honor, the InterStim is essentially a
20 pacemaker for your bladder, and it has electronic
21 programming. And Guerette can read that programming. And
22 this came up in the motion in limine hearing that he can
23 read that and state that the programming indicated a
24 malfunction with physical force on the date of the
25 accident.

1 That is part of his observations in diagnosing
2 and treating her for the injuries she alleged are related
3 to the accident.

4 THE COURT: And how -- I mean, that's expert
5 testimony, though, right?

6 MS. COHN: I do not believe so, Your Honor. It
7 is a fact that the machine indicated to him the
8 malfunction. It's not -- we're not saying from the car
9 accident. I'm not saying it's physical force from the car
10 accident.

11 THE COURT: You're saying multiple things.
12 Okay. First -- the first point you're saying is that he's
13 going to say the InterStim device was not functioning.
14 Okay?

15 MS. COHN: Correct.

16 THE COURT: That's an observation. As a doctor,
17 he can look at it and say why and say that it's not
18 operable.

19 But then the next step that you're going to is
20 why it's not operable, which you're saying -- and I don't
21 know how these InterStim things work. You're saying that
22 he can read data --

23 MS. COHN: Correct.

24 THE COURT: -- and interpret that, right?
25 That's essentially -- it doesn't -- there's not -- the

1 InterStim is not going to spit out that says I'm not
2 working because physical damage. It's going to be he has
3 to look at it and interpret that.

4 How is that not expert opinion?

5 MS. COHN: Then, Your Honor, I can limit it to
6 the malfunction on the date, which is clearly indicated in
7 the programming. It's not an interpretation. It's the
8 readout from the machine. I can limit it to not say
9 physical force if Your Honor believes that that's a
10 causation issue.

11 THE COURT: I want to see what it says. Do you
12 have it with you?

13 MS. COHN: I do not have it with me. I can get
14 it to Your Honor, and I can get it to Mr. Keeney.

15 THE COURT: You mean you haven't given it to him
16 already?

17 MS. COHN: I do not have it in my possession,
18 Your Honor. It's simply testimony that's going to be
19 provided by Dr. Guerette.

20 THE COURT: Well, you can't do that. You needed
21 to turn that over a long time ago. I'm striking that.

22 All you can put on is he can testify he observed
23 the InterStim device, it was not operable, period.

24 You needed to disclose that, and he had the
25 right to have an expert review that material to determine

1 whether or not it was accurate.

2 I'm going to tell you, you're -- this is --
3 you're hanging by a gnat's eyelash, what I like to say, as
4 to this phase. I'm letting you put on her testimony.

5 All he can say in that first phase is, "I
6 examined her for treatment purposes because she complained
7 that she had injuries." He can't report what the injuries
8 were. Just, "I'm not feeling well."

9 "I examined her. I looked at the InterStim
10 device. It was not operable," period. That's it.

11 MS. COHN: Your Honor --

12 THE COURT: That's it.

13 MS. COHN: So he cannot discuss the diagnosis of
14 what her injuries were when she appeared to be treated by
15 him in October of 2019?

16 THE COURT: Not in phase one. All he can say
17 is -- well, he can say, "I was treating her for an
18 inoperable InterStim device."

19 The issue in this case is why the InterStim was
20 not operable. You needed to disclose that.

21 MS. COHN: Your Honor, I think there's some
22 confusion here.

23 The InterStim is simply part of the overactive
24 bladder situation. However, the prolapse is a wholly new
25 and different complaint that was not present previously.

1 And that's also part of the treatment that she sought from
2 him in October of 2019.

3 THE COURT: And what does that diagnosis entail,
4 him looking at her pelvic area?

5 MS. COHN: Yes, him doing --

6 THE COURT: I mean, I'm not a doctor. I need to
7 know, like, what he's going to say.

8 MS. COHN: Yes. Him examining her, doing
9 internal exams, doing external exams, diagnosing her with
10 the pains and the complaints that she presented with on
11 that date.

12 THE COURT: He can testify to his observations
13 from the evaluation. Okay? But he cannot interpret
14 anything that is coming from the InterStim device. He can
15 look at the InterStim device and say whether it was
16 functioning or not, period. That's it.

17 MS. COHN: Okay.

18 THE COURT: All right. Is there any other point
19 you want to make about this, Mr. Keeney?

20 MR. KEENEY: I don't think so, Your Honor.

21 The only -- and I think the Court addressed this
22 earlier, but I just want to make sure we're on the same
23 page. In 2019, his diagnosis is expired InterStim. Am I
24 allowed to have him say that it was expired or does that
25 open the door?

1 THE COURT: Well, that's going to be up to you
2 as to whether you open the door. If you go into the
3 reasons -- what I'm saying is is he can testify that it
4 was not functioning.

5 MR. KEENEY: Okay.

6 THE COURT: The question is is why was it not
7 functioning?

8 Now, if you start opening that door, I'm going
9 to let her go back at it again, right?

10 It seems to me --

11 MS. COHN: Your Honor, I apologize.

12 THE COURT: Just hold on a second.

13 MS. COHN: I just -- I need to take a seat,
14 Your Honor. I'm not feeling very well right now.

15 THE COURT: All right. Go ahead. Have a seat.

16 MS. COHN: Thank you.

17 THE COURT: Do you need a recess? Do you want
18 to take a recess?

19 We're going to take a recess here.

20 (Recess from 10:48 a.m. until 11:02 a.m.)

21 THE COURT: Everybody just sit down. Just sit
22 down.

23 MS. COHN: Your Honor, I'm fine. And I promise
24 you I will eat next time before I come to your court.

25 THE COURT: It's okay. Why don't you have a

1 seat. Just have a seat.

2 We're fortunate we have microphones there. And
3 that's what we're going to do. And that's for both of
4 you. Okay? So when you -- but just take your mask off
5 when you speak.

6 So just talk into the microphone so we can get
7 through this. Okay?

8 So we know -- here's what I want you to do.
9 I've ruled on what the limits are on Dr. Guerette for
10 phase one. When you have your meet and confer, go over
11 this so that both sides know exactly what's going to
12 happen. And if there's a dispute, I'll deal with it next
13 week.

14 All right. Is there anything else on the
15 exhibits I need to address now or can I wait until after
16 you file your exhibit lists?

17 MR. KEENEY: I don't think so, Your Honor. I
18 think that's it.

19 THE COURT: Okay.

20 MS. COHN: I think that's it, Your Honor.

21 THE COURT: Okay. All right.

22 Let's talk about voir dire here for a second.
23 What I'm going to do is I'm going to take what I think are
24 the appropriate -- the appropriate questions and work them
25 in, but I had a couple questions.

1 Where's the voir dire in here, Hannah? Which
2 binder is it in? Do you know?

3 MS. GOURDIE: No. I can't remember.

4 THE COURT: Oh, I found it.

5 All right. What's the -- what's the issue about
6 being a mechanic? I'm referring to you, Mr. Keeney.

7 Your -- you mention about East Coast Repair Center and
8 have you ever been a mechanic. What's that about?

9 MR. KEENEY: Yes, Your Honor.

10 THE COURT: Hold on. Sit down.

11 MR. KEENEY: Okay.

12 THE COURT: We're going to do this again.
13 You're both going to remain seated. You're going to talk
14 into the microphone at the table, and you're going to take
15 your mask off when you speak. Okay?

16 MR. KEENEY: Sorry, Your Honor. Force of habit.

17 THE COURT: All right. What does East Coast
18 Repair Center have to do with this case?

19 MR. KEENEY: Yes, Your Honor. It is the
20 mechanic shop owned by her boyfriend/fiancé. And in her
21 deposition, Ms. Roop said she doesn't work. However, the
22 Alliance Physical Therapy records indicate that she is
23 working as a mechanic. And this goes to what I was saying
24 about when she was recovering and the records indicate
25 that she is doing heavy lifting and working as a mechanic

1 while she is in physical therapy.

2 So it goes to knowledge about what a mechanic
3 does and the physical exertion of a mechanic and the
4 impact that it may have on someone's, say, neck, back and
5 shoulder.

6 THE COURT: All right. I'm going to ask about
7 East Coast Repair only in case they would know her, but
8 I'm not going to ask about the mechanic. You can just
9 bring that out. What's relevant is what she did. You can
10 cross-examine her on that.

11 All right. Let me just see. Why are we asking
12 the question about do you have experience riding a horse?

13 MR. KEENEY: Well, I think we both asked that,
14 Your Honor. But it would be whether or not someone had --
15 if they understood the force with getting dragged by a
16 horse.

17 THE COURT: I'm not doing that.

18 MR. KEENEY: Okay.

19 THE COURT: So that's going to be a no.

20 Same thing about being dragged through a field.

21 All right. The rest of this stuff I'm going to
22 work into my own version of the voir dire.

23 Let me go to the plaintiff's ones.

24 MR. KEENEY: And, Your Honor, I know you're not
25 going to read the first -- I put the wrong date in

1 number 1 of mine.

2 THE COURT: I'm going to fix all this. Don't
3 worry about it.

4 The questions about a horse are out.

5 Let's see. The comfortable awarding damages.
6 I'm not asking that kind of stuff. They'll be instructed
7 on that.

8 Let's see here. I am going to ask questions
9 about InterStim devices or similar devices, but it won't
10 be to the depth of questioning that you all are asking.

11 What's -- Ms. Cohn, what's the -- why do you
12 want me to ask about do you have children, complications
13 from childbirth? What's that about?

14 MS. COHN: Your Honor, I think it goes directly
15 to the prolapse issues and things of that nature. But if
16 Your Honor is going to strike any mention of future, then
17 it would probably not be applicable.

18 THE COURT: Okay.

19 All right. Okay. I'm going to take what I
20 think are the appropriate questions that you all
21 submitted, and you'll get a copy of that in advance. And
22 if you have any objections to it, you can tell me next
23 Tuesday.

24 All right. Let's talk about argument for a
25 second. I'm going to limit openings for both sides in

1 both phases to 15 minutes. Closings to 30 minutes. That
2 includes rebuttal. I instruct the jury before closing
3 arguments. That's the way I do it. So I'll instruct.
4 Ms. Cohn, then you'll argue.

5 Is Mr. Galindo going to argue, too, or is it
6 just you, Ms. Cohn?

7 MS. COHN: It's all me, Your Honor.

8 THE COURT: Okay. So what I'm going to say is
9 this. I'm a maniac about time. So if you use 30 minutes
10 on your beginning argument, you'll have nothing left for
11 rebuttal. You're cheating yourself here, too. So you
12 don't have to worry about cheating Mr. Galindo. It's just
13 you, right? So it's 30 minutes combined, closing and
14 rebuttal.

15 So I'll give the instructions. You'll close.
16 Mr. Keeney will then close. And whatever time you have
17 left you can do for rebuttal.

18 What I then do is go over with the jury one more
19 time -- it will be the last instruction on how to do your
20 job. You'll see this. It's a standard instruction I
21 give. Just go over with them one more time about picking
22 the foreperson and filling this out right.

23 I am going to change the verdict form around a
24 little bit, too. You'll see that as well.

25 All right. Let's talk about jury selection,

1 okay, so everybody is on the same page about what's going
2 to happen here. Okay?

3 Now, as you all have agreed, we struck
4 unvaccinated jurors. The issue came up with our jury
5 clerk as to, well, what does it mean to be unvaccinated --
6 or to be vaccinated?

7 I did not require boosters. So anybody that is
8 coming in here has had two shots. That does not mean,
9 though, they've had a booster.

10 Do you have any objection to that, Ms. Cohn?

11 MS. COHN: No, Your Honor, I do not.

12 THE COURT: All right.

13 Mr. Keeney?

14 MR. KEENEY: No, Your Honor.

15 THE COURT: Okay. We will select 7 jurors.
16 Okay? Each of you has 3 peremptory strikes. We will
17 bring in 3 panels of 15 each, totaling 45 jurors. You
18 should have already gotten a jury list. Am I right about
19 that?

20 MS. COHN: Yes, Your Honor, we did.

21 MR. KEENEY: Yes, Your Honor.

22 THE COURT: Physically, I just want to walk
23 through this with you so you know what's going on.

24 By the way, I understand one of you has interns,
25 or something like that, that might want to watch. Do you

1 have interns?

2 MS. COHN: Correct, Your Honor. They're
3 actually currently seated in our courtroom.

4 THE COURT: Okay. Well, we have a zillion
5 interns in our building.

6 They'll have to watch jury selection on the
7 fifth floor. We're going to broadcast jury selection
8 to -- do you know what courtroom it's going to be?

9 THE CLERK: I'm sorry, Your Honor. We have not
10 been assigned a courtroom, but one has been requested.
11 I'm pretty sure it's going to be fifth floor.

12 THE COURT: Okay. So Ms. Garner will let you
13 know by Tuesday when we have our follow-up -- another
14 final pretrial conference.

15 THE CLERK: Yes, sir.

16 THE COURT: She'll let you know. Jurors -- or
17 your interns are to go there.

18 No witnesses can go there, right, because the
19 rule on sequestration is going to apply?

20 And that courtroom -- we'll probably have that
21 open as well for the trial, then, as well, just in case.

22 THE CLERK: Okay.

23 THE COURT: So if somebody wants to watch, they
24 can watch. They just can't be a witness.

25 So let's say, for example, Ms. Roop's boyfriend,

1 if he's going to testify, he can't go in and watch because
2 it would be like he would be in here.

3 Do you understand that, Ms. Cohn?

4 MS. COHN: I already made that very clear to
5 him, Your Honor.

6 THE COURT: Okay.

7 Do you understand that, Mr. Keeney?

8 MR. KEENEY: Yes, Your Honor.

9 THE COURT: Okay. Now, so here's how we're
10 going to do this. Okay?

11 The 15 jurors will come in. So the first panel
12 is told to be here at 9. You all have to be in place
13 before 9:30. Say 9:25. I come out. I take the bench at
14 9:30. Okay. It takes a half an hour for us to move
15 people around in the building to get here.

16 I'll take the bench at 9:30. We will bring the
17 jury in. So the jury is not brought in until I take the
18 bench. Okay? They'll be brought in. They'll be seated
19 out there in the public area, which is why no interns or
20 no members of the public can be seated there. That's why
21 we have the public room. Okay?

22 I will then go through the voir dire. I'll read
23 the script that you're going to have. We're going to file
24 it by Thursday. So you'll know exactly what I'm going to
25 say, exclusive of the voir dire. Okay?

1 So I'll ask general questions to the panel,
2 consistent with what you've submitted, consistent with
3 what I think is appropriate. Okay? They'll raise their
4 hands. They'll -- you know, let's say, "Hey, do you know
5 anything about this East Coast Auto Body?" The person
6 raises their hand. I'll take down their number. Okay.
7 We'll go through all the questions. Okay?

8 When I'm done with the general questions,
9 Ms. Garner then will call up the jurors one by one to the
10 witness box. Okay. And I will then ask any follow-up
11 questions. All right.

12 So let's say somebody says, "Hey, I go to that
13 repair shop." I'm going to say, "Hey, did you ever deal
14 with Ms. Roop? Did you ever deal with Mr. Barton? Is
15 there anything about that that would affect your ability
16 to be fair okay here?" Okay. That's just an example.
17 Okay? I'll do my follow-up.

18 When I'm done with my follow-up, you will have
19 headsets. This is part of your tech you're going to walk
20 through. It's like airplane pilots, right? You're going
21 to put your headset on. All right. It's got a little
22 microphone. Ms. Garner will turn on white noise.

23 I will then turn to Ms. Cohn first and I'll say,
24 "What says the plaintiff? Accept or strike?"

25 If you have a motion for cause, you'll say it

1 then. Okay?

2 So what I'm saying to you is because of COVID,
3 we don't do sidebars. We use these headsets. Headset is
4 essentially equivalent to a sidebar. Before COVID, I'd
5 have you come up. We would do it all on the side, right?
6 We don't do that now. So you'll have your own headsets.
7 You'll put them on, and you'll communicate.

8 You've got to make sure you -- you generally
9 cover your mouth when you speak so that nobody else can
10 hear what you're saying, right? You'll speak into the
11 microphone.

12 So, Ms. Cohn, you say "accept." I then turn to
13 Mr. Keeney and I'll say, "What says the defense? Accept
14 or strike?"

15 You'll then say "accept" or "strike." Okay?

16 When it's done, if they're accepted, we tell
17 them to come back the next day at 9:00. We'll start
18 promptly on Friday at 9:30. Okay. If they're struck --
19 we also -- if they're accepted, we also give them a
20 handout. We'll give you a copy of it before. It's really
21 instructions if they get sick that night. It's all about
22 COVID, right? So let's say they go home, they're not
23 feeling well. I don't want somebody coming in for jury
24 service when they might have COVID, right?

25 The good thing is this is a one-day trial, as

1 you all have promised me. So we'll give them
2 instructions. It's, like, who to call. I go over the
3 fact that they're not supposed to talk about their
4 testimony and all that kind of stuff. They leave. If
5 they -- if they're struck, I just say, "Thank you for your
6 service. Have a nice life." Okay?

7 Now, there is no backstriking. Meaning that
8 once you say "accept" and they're on the jury, they're on
9 the jury. So you can't go back.

10 So let's say Juror Number 1, you accept,
11 Ms. Cohn. You accept, Mr. Keeney. I say, "Okay, you're
12 on the jury." They leave. Well, it turns out at the end
13 of the day, you only used one of your strikes and you got
14 two left. You can't come back to me and say, "Hey,
15 Judge Novak, that person, now I want to strike them."

16 We can't do that. That's what it means by no
17 backstriking. So once I say they're on, they're on.

18 Ms. Cohn, do you understand that?

19 MS. COHN: Absolutely, Your Honor.

20 THE COURT: Mr. Keeney, do you understand?

21 MR. KEENEY: Yes, Your Honor.

22 THE COURT: All right. We will go through the
23 first one. It normally takes about an hour and 15 minutes
24 to do a panel. Okay?

25 When that panel is done, we'll then take a

1 break. I think the next panel is supposed to come at 11.
2 I take the bench at 11:30. It talks us a half an hour.
3 It's all about the elevators. What we have found --
4 because you can't stuff all these people in elevators
5 because of COVID, right? It works better if I do
6 individual striking because of the elevators because of
7 COVID. That's what we're really trying to accomplish
8 here, right?

9 So we'll do the same thing with panel 2, and if
10 necessary, we'll go to panel 3. My guess is we'll have
11 the jury by the second panel, to be honest with you.

12 Okay. Is there -- does anybody have any
13 questions about how we're going to proceed on jury
14 selection, then? Ms. Cohn?

15 MS. COHN: None, Your Honor.

16 THE COURT: Okay.

17 Mr. Keeney?

18 MR. KEENEY: Your Honor, will we know the order
19 in which each panel, like, Juror 1, 2, 3, will come into
20 the box or will you --

21 THE COURT: No, because it's random selection.

22 MR. KEENEY: Out of 15, it will be random.

23 THE COURT: We don't have the order like that,
24 right?

25 THE CLERK: No, sir.

1 THE COURT: Right. So she does random
2 selection.

3 Okay. That's all I have for right now.

4 Ms. Cohn, do you have anything else you want to
5 address?

6 MS. COHN: Not at the moment, Your Honor.

7 THE COURT: Okay.

8 Mr. Keeney?

9 MR. KEENEY: No, Your Honor.

10 The only question I would have for the Court is
11 I think when we scheduled this for actually one day, it
12 wasn't going to be bifurcated. In theory, would the court
13 like to do openings on Thursday or something?

14 THE COURT: Well, the problem with that, I can't
15 do that.

16 MR. KEENEY: I was just asking. That's fine.

17 THE COURT: Look, in the old days, we did that.
18 Because of COVID, I can't have somebody sitting around all
19 day.

20 So we're going to do what we have to do. If it
21 spills into a second day, I'll move it. I'm going to let
22 you try your case. Okay? So if I got to go to a second
23 day, we'll go to a second day. We'll just move to that
24 Monday if we have to. We just -- I mean, I think I have a
25 lot that day. But we'll figure that out when we get

1 there.

2 MR. KEENEY: And, Your Honor, my only other
3 question, I just remembered this. Given the current mask
4 situation, will the jurors, when they're in the witness
5 box, take their mask off so we can observe their face
6 or --

7 THE COURT: Anybody that hits the witness box,
8 the reason we have plexiglass is they take their mask off
9 so you can observe them.

10 MR. KEENEY: Perfect.

11 THE COURT: And that will be true for witnesses,
12 too.

13 We have a standard procedure on how we've done
14 this. So -- it's actually worked fine. We've tried seven
15 juries so far during COVID, even before vaccinations.
16 Nobody got sick.

17 The other thing you have to worry about is you
18 don't want people rendering verdicts just because they
19 want to get out of here, right, because they're afraid
20 they're going to get sick. So I'll talk to them a little
21 bit about why we've got a good plan here to kind of calm
22 them down. Okay?

23 All right. Anything else, then? Are we good?

24 MR. KEENEY: Yep.

25 THE COURT: All right. I'll look forward to

1 seeing you next Tuesday. You know what you have to do
2 between now and Friday, though. Okay?

3 MS. COHN: Thank you, Your Honor.

4 MR. KEENEY: Thank you, Your Honor.

5 (The proceeding concluded at 11:19 a.m.)

6 REPORTER'S CERTIFICATE

7 I, Tracy J. Stroh, OCR, RPR, Notary Public in and for
8 the Commonwealth of Virginia at large, and whose
9 commission expires September 30, 2023, Notary Registration
10 Number 7108255, do hereby certify that the pages contained
11 herein accurately reflect the stenographic notes taken by
12 me, to the best of my ability, in the above-styled action.

13 Given under my hand this 12th day of July 2022.

14
15 /s/
Tracy J. Stroh, RPR

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil No. 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.


ORDER
(Clarifying Parameters of Evidence)

This matter comes before the Court following the Final Pretrial Conference (“FPTC”) between the parties and the Court on July 12, 2022. For the reasons stated on the record during the FPTC, the Court hereby ORDERS as follows:

1. Plaintiff may not present any evidence of Plaintiff’s future damages, because she did not adequately notify Defendant of evidence or expert testimony on this issue.
2. As it pertains to Plaintiff’s Interstim device, the testimony of Dr. Nathan Guerette shall be limited to his observations of whether the Interstim was functioning during the course of his treatment of Plaintiff. He may not testify to the cause of the device not functioning nor discuss any readouts from the device.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.

/s/ 
David J. Novak
United States District Judge

Richmond, Virginia
Date: July 12, 2022

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

* * * * *

SAMANTHA ROOP,

Plaintiff,

vs.

NICHOLAS JAMES DESOUSA,

Defendant.

* * * * *

* CIVIL NO. 3:21-CV-00675
* SEPTEMBER 1, 2022 2:01 P.M.
* FINAL PRETRIAL CONFERENCE
* VOLUME I OF I
*
* Before:
* HONORABLE DAVID J. NOVAK
* UNITED STATES DISTRICT JUDGE
* EASTERN DISTRICT OF VIRGINIA

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

Roop v. Desousa - 09/01/2022

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Roop v. Desousa - 09/01/2022

1 (Court convened at 2:01 p.m.)

2 THE CLERK: Civil Action 3:21-CV-675, *Samantha B.*
3 *Cohn versus Nicholas James Desousa.*

4 Representing the plaintiff is Samantha Cohn.

5 On behalf of the defendant is Carter Keeney.

6 Counsel, are we ready to proceed?

7 MS. COHN: Ready, madam.

8 MR. KEENEY: Yes, ma'am.

9 THE COURT: The way we're going to proceed is this:
10 Everybody is going to keep their mask on until it's your turn
11 to speak. But when you speak, if you feel comfortable doing
12 so, you've got to take your mask down so the court reporter
13 can hear you. And we'll proceed in that fashion.

14 I ordered, Ms. Cohn, for Mr. Barton to be here. I
15 gather -- is he here? He's behind you?

16 MS. COHN: Correct, Your Honor. He's the gentleman
17 behind me in the salmon-colored shirt.

18 THE COURT: So here's what we're going to do: It
19 seems to me, since there is this dispute and we've had all
20 these discovery issues, frankly, this all should have been
21 ferreted out in discovery. But whatever happened happened.
22 We're going to take his limited testimony on this issue about
23 the operability of the InterStim. It's really designed for me
24 to understand what's going on here so I can make a pretrial
25 ruling.

1 I say that, Mr. Keeney, we're going to have relaxed
2 evidentiary rules here. This is more informative. It's not
3 going to replace his testimony at trial. You're not waiving
4 any objections on hearsay or anything like that. It's really
5 designed for me to figure out what's going on here, and then
6 you-all can make your arguments.

7 What we're going to do is, after Mr. Barton
8 testifies, though, I'm going to sequester him outside, because
9 I gather you're invoking the rule --

10 MR. KEENEY: Yes, Your Honor.

11 THE COURT: -- for trial?

12 Is Ms. Roop here?

13 MS. COHN: No, Your Honor, she is not.

14 THE COURT: Do you have any other witnesses here?

15 MS. COHN: No, Your Honor. You simply asked for me
16 to bring Mr. Barton here today to testify, so he's the only
17 person here.

18 THE COURT: That's actually perfect. That's what I
19 wanted to do.

20 Mr. Barton, do you want to come on up to the witness
21 stand?

22 And, Ms. Cohn, do you want to go to the lectern?
23 You're going to do the examination on just this limited issue
24 that you want to introduce about the operability of the
25 InterStim.

Barton - Direct

1 MR. KEENEY: And, Your Honor, if I understood you
2 correctly, I'll just stay silent, and then I can say what my
3 issues are after Mr. Barton has left the courtroom?

4 THE COURT: Yes. But you're going to get a chance to
5 cross-examine him about this point too.

6 MR. KEENEY: Right. Right.

7 THE COURT: The idea is I need to understand what's
8 going on here, what the fight is about, okay?

9 GERARD O. BARTON, JR., PLAINTIFF'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 THE COURT: So, Mr. Barton, in a loud, clear voice --
12 you can scoot up a little bit. In a loud, clear voice, can
13 you tell us your full name, spelling both your first and your
14 last names?

15 THE WITNESS: Gerard O'Donnell Barton, Jr.
16 G-E-R-A-R-D. B-A-R-T-O-N.

17 THE COURT: Go ahead, Ms. Cohn.

18 MS. COHN: Thank you, Your Honor.

19 Your Honor, just to make it clear to the Court before
20 we proceed, Mr. Barton, in his statements as proffered today,
21 are not in violation of any discovery request or lack
22 thereof --

23 THE COURT: Just do the exam and then we'll have that
24 discussion down the road.

25 MS. COHN: Thank you, Your Honor.

Barton - Direct

1 BY MS. COHN:

2 Q Mr. Barton, you're obviously here because you know
3 Ms. Roop.

4 MS. COHN: Your Honor, may I give just a little
5 brevity to get to the point?

6 THE COURT: I'll tell you what, I'll do this.

7 Mr. Barton, are you the life partner of Ms. Roop?

8 THE WITNESS: Yes, I am.

9 THE COURT: How long have you been her life partner?

10 THE WITNESS: Going on 16 years.

11 THE COURT: Okay. And were you her life partner at
12 the time of this accident in July of 2019?

13 THE WITNESS: Yes, I was.

14 THE COURT: And was she using an InterStim device at
15 that time?

16 THE WITNESS: Yes, she was.

17 THE COURT: Could you tell me what it looks like, or
18 could you visibly see it?

19 THE WITNESS: It is a cell phone-looking device that
20 has a remote piece that attaches or that you hold up against
21 her body, and then the cell phone does everything else.

22 MS. COHN: Your Honor, if I may to clarify, it's not
23 the InterStim itself. It's an external monitor that hooks up
24 to the InterStim.

25 THE COURT: Okay. I'm going to do this.

Barton - Direct

1 MS. COHN: Okay.

2 THE COURT: So the InterStim is in her device --

3 THE WITNESS: Yes.

4 THE COURT: -- projecting information to another
5 device? Is that what's going on?

6 THE WITNESS: The InterStim is a small unit inside of
7 her body that has leads that go to her bladder.

8 THE COURT: Okay. And then does it have some kind of
9 transponder that disseminates to, like, the cell phone-type
10 looking device?

11 THE WITNESS: The transponder piece is the piece that
12 you use externally.

13 THE COURT: Okay. Is that connected to her body?

14 THE WITNESS: No.

15 THE COURT: Does she have something that the external
16 device, which you describe is similar to a cell phone, that it
17 connects to something on her body?

18 THE WITNESS: You have two pieces. One of them is
19 the cell phone that you can use to operate, and then you have
20 another piece that goes over her scar where they inserted the
21 InterStim.

22 THE COURT: Okay. And the piece that goes over her
23 scar, is it attached to her body or she just waves it over top
24 of it, or what does she do?

25 THE WITNESS: You hold it overtop of it.

Barton - Direct

1 THE COURT: Okay. So it's not --

2 THE WITNESS: It's not attached to her body.

3 THE COURT: Okay. And how often would she check its
4 operability?

5 THE WITNESS: We check it once a month.

6 THE COURT: Okay. And describe to me what happens
7 when you were checking it before the accident. Just walk me
8 through the process, what happens.

9 THE WITNESS: She's had it for years and we checked
10 it once -- we always checked it once a month for visual and
11 battery life and everything. We had checked at the end of
12 June, prior to the accident.

13 THE COURT: And tell me how you -- when you say you
14 checked it, that's what I need you -- I need to get in the
15 weeds. Tell me physically what you did on the end of June of
16 2019.

17 THE WITNESS: Like we always do, we hold the monitor
18 to her left buttocks and --

19 THE COURT: That's where the scar is?

20 THE WITNESS: Yes, sir. And then you have the cell
21 phone piece that tells you battery life, you can change
22 settings, programs, and everything to that effect. And we
23 always check battery life every month on the InterStim.

24 THE COURT: Okay. So now I want to talk about
25 exactly what you would see and what you saw on, I guess, the

Barton - Direct

1 end of June, okay? So you hold the one device, which looks
2 like what, that you hold over her scar? What does that look
3 like?

4 THE WITNESS: It basically looks like a cell phone,
5 just a flat piece of plastic that you can turn on.

6 THE COURT: Okay.

7 THE WITNESS: There's -- it looks like a cell phone
8 with a button in the back.

9 THE COURT: So when you turn that on and you hold it
10 over the scar, what happens?

11 THE WITNESS: When you turn it on, it connects with
12 the cell phone; and then when you hold it over the scar, it
13 brings up all of her numbers that her InterStim is set at
14 already, it brings up the InterStim battery life, and at that
15 point you can change settings on it.

16 THE COURT: So, essentially, let me -- and I want you
17 to correct me if I'm wrong, okay? Because this is really
18 important that I understand what's going on.

19 It sounds like, essentially, the device that's like a
20 cell phone-type of device that you're holding over the scar is
21 essentially pulling information from the InterStim device and
22 then translating it over to her cell phone that you can then
23 extrapolate information from; is that right?

24 THE WITNESS: Correct. Except for the piece that
25 it's translating to is not an actual cell phone; it just looks

Barton - Direct

1 like a cell phone.

2 THE COURT: So you have two devices that look like
3 cell phones?

4 THE WITNESS: It's the --

5 THE COURT: Let's do it this way: Device Number 1,
6 we're going to call the scar device.

7 THE WITNESS: Okay.

8 THE COURT: You just hold over the scar. Device
9 Number 2, we're going to call the information device.

10 THE WITNESS: Okay.

11 THE COURT: Does that make sense to you?

12 THE WITNESS: Yes.

13 MS. COHN: Your Honor, I'm sorry. There's a video
14 that I have that is from the actual website that runs the
15 device, that -- it's not the same exact device. But I sent it
16 to him and he said it's relatively the same. If I show the
17 Court the video, it might give a visual explanation just for
18 demonstrable purposes, not for the introduction at trial or
19 anything of that nature.

20 THE COURT: That's fine. Let's mark that Plaintiff's
21 Exhibit Number 1. Do you have it there with you?

22 MS. COHN: Yes. I can pull it up, Your Honor.

23 THE COURT: And is there audio on it or not?

24 MS. COHN: There's audio. They're discussing how it
25 works. It's like a semi-training video.

Barton - Direct

1 (Plaintiff's Exhibit Number 1 was marked for
2 identification.)

3 THE COURT: So, Mr. Barton, while this is playing, if
4 there's something that you want to add, say, like, it's
5 different, her device is different in this way, you chime in
6 while it's playing, okay?

7 THE WITNESS: Okay.

8 THE COURT: Because it's not exactly the same, right?

9 I'll tell you what, we'll play the video and then you
10 tell me what you want to tell me. How does that sound?

11 THE WITNESS: Okay.

12 THE COURT: So for purposes of this hearing, it's P1,
13 is the video.

14 MS. COHN: My apologies to the Court. I'm not sure
15 how to connect it to broadcast it.

16 THE COURT: How do we do that, Cheryl?

17 THE CLERK: Are you connected?

18 MS. COHN: I'm not connected.

19 MR. KEENEY: You probably just need to plug in the
20 HDMI cable.

21 THE CLERK: Do you have the wire for our system? You
22 have to plug into us first.

23 MS. COHN: Right. I just don't want to break
24 anything. That's really what it boils down to.

25 THE CLERK: I don't know if that's the right cord.

Barton - Direct

1 MS. COHN: No, it's right there.

2 THE CLERK: Good job, Tim.

3 THE COURT: Okay. I've got it.

4 (Video is playing.)

5 THE COURT: All right. Just for the record, you
6 played something from a website for Medtronic.

7 MS. COHN: Medtronic is who produces the InterStim,
8 Your Honor.

9 THE COURT: So what you're going to do, though, is we
10 need to have a record for appellate purposes. So you've going
11 to download that to a CD and then give it to my clerk.

12 MS. COHN: Happily, Your Honor.

13 THE COURT: We'll mark it as P1 for purposes of the
14 motion.

15 So, Mr. Barton, is that the way that you-all operate
16 Ms. Roop's InterStim device, or is there differences?

17 THE WITNESS: Yes, that is the way.

18 THE COURT: So, essentially, what I call the scar
19 device is really the communicator, right?

20 THE WITNESS: Yes, sir.

21 THE COURT: So as I'm understanding, and you tell me
22 if I'm wrong, you're putting the communicator over her scar,
23 that's projecting the information to the programmer.

24 THE WITNESS: Yes.

25 THE COURT: And then you tap on the menu icon for

Barton - Direct

1 battery life, and then it reveals whether the battery is
2 operating?

3 THE WITNESS: Yeah. You can tap on the battery life
4 and it tells you what the battery life is of the InterStim
5 inside of her body.

6 THE COURT: And you did that at the end of June of
7 2019?

8 THE WITNESS: Yes, sir.

9 THE COURT: Do you recall what you observed?

10 THE WITNESS: I don't recall the actual number, but
11 it was over 50 percent battery life.

12 THE COURT: Okay. How do you know that?

13 THE WITNESS: Because I remember the reading on
14 the -- I don't remember exactly what the reading was, but it
15 was over 50 percent battery life.

16 THE COURT: And you personally did that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. When was the next time that you
19 looked at that after the accident?

20 THE WITNESS: The day after the accident.

21 THE COURT: And did you go through the same process?

22 THE WITNESS: Yes, sir.

23 THE COURT: What did you observe?

24 THE WITNESS: I was able to -- the communicator and
25 the device were able to communicate and connect, I was able to

Barton - Direct

1 check battery life, but I was not able to change any settings.
2 And as you heard in the video that you change settings
3 according to comfortability, and none of the settings were
4 changing.

5 THE COURT: Okay. So what did the battery life say?

6 THE WITNESS: Again, it was still over 50 percent. I
7 don't remember the exact number.

8 THE COURT: Okay. So, in summary, the difference
9 between the two times is essentially the operability to change
10 settings? The battery life was still there.

11 THE WITNESS: Yes, sir.

12 THE COURT: It's just you couldn't change settings;
13 is that right?

14 THE WITNESS: Yes, sir.

15 THE COURT: Did you have follow-up questions?

16 MS. COHN: Thank you, Your Honor.

17 BY MS. COHN:

18 Q Mr. Barton, were you primarily the one who checked
19 Samantha's monitor for the InterStim?

20 A Normally, yes, I was.

21 Q And how long had you been doing that for her?

22 A For the length of time that she's had it.

23 Q Did you go with Samantha to --

24 THE COURT: We're going to do Ms. Roop.

25 MS. COHN: Sorry.

1 BY MS. COHN:

2 Q Did you go with Ms. Roop to her appointments at
3 Dr. Guerette's office regarding the InterStim?

4 A Yes, I did.

5 Q Were you present with Ms. Roop when the InterStim had
6 first been implanted in her body?

7 A Yes, I was.

8 Q And did the doctor's office show you how to use the
9 monitoring system?

10 A Yes, they did.

11 Q So it's fair to say you had been checking it on a monthly
12 basis since its initial implantation?

13 A Yes.

14 Q What made you check it after the accident?

15 A Pain.

16 Q Can you go a little bit more in depth with that? Whose
17 pain?

18 A Samantha's pain. And that was the only thing I knew what
19 to do, is check that, because of where she was describing the
20 pain at.

21 MS. COHN: Your Honor, I have no more questions.

22 THE COURT: Mr. Keeney.

23 MR. KEENEY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25

1 BY MR. KEENEY:

2 Q Sir, my name is Carter Keeney. I represent Mr. Desousa
3 in this lawsuit.

4 Where was the pain?

5 A In her lower left abdominal area.

6 Q On the front?

7 A Yes.

8 Q And you testified that after this accident when you
9 tested it, it looked the same, but you couldn't change the
10 settings, correct?

11 A Correct.

12 Q Did you try to change the settings two weeks before?

13 A No, we had checked it --

14 Q The end of June.

15 A -- the end of June. I don't remember the exact date.

16 Q Well, let me ask a more specific question. The last time
17 you checked it, did you try to change the settings?

18 A Yes.

19 Q Okay. And they changed?

20 A Yes.

21 Q Why did you change the settings last time?

22 A It gives her comfortability with urinating. It depends
23 upon -- you know, if she drinks soda or anything like that, we
24 can change settings at least a point, between one point -- one
25 point and three points to help her bladder urinate.

1 Q And what uncomfortability was she having at the end of
2 June?

3 A She was having severe pain.

4 Q At the end of June?

5 A At the end of June, no.

6 Q Well, you told me you changed it at the end of June
7 because you had -- let me back up. You would only change the
8 device if she was having issues?

9 A Comfortability issues, yes.

10 Q Okay. And you just told me at the end of June you
11 changed the settings on the device, correct?

12 A Right.

13 Q Why did you change the settings at the end of June? What
14 were the issues?

15 A We changed the settings at the end of every month,
16 checking battery life and to give her bladder the
17 comfortability to -- it's hard to describe because it's not
18 inside my body. But when she says it starts to tingle, I turn
19 it down two points, exactly what the doctor's office told us
20 to do.

21 Q Okay. So end of June, she told you when you were
22 checking it, she told you it tingled and that's --

23 A When I communicate with the InterStim and I turned it up
24 two -- I forgot if it was two or three points, it started to
25 tingle, I backed it down two points.

Barton - Cross

1 Q So in your monthly checkups, you always ratchet it up
2 until she starts to tingle and then back off?

3 A I either ratchet it up or -- I either increase it or
4 decrease it.

5 Q Okay. Ms. Roop retained counsel for this lawsuit within
6 a week after the accident, correct?

7 A Yes.

8 Q Okay. And you were with her when the InterStim was
9 explanted, when it was removed, correct?

10 A Yes.

11 Q And that was in the beginning of 2020, correct?

12 A Yes.

13 Q And at that point, y'all threw the device away, correct?

14 A You don't get to keep the InterStim from inside the body.

15 Q Well, you had the handheld device, correct?

16 A The handheld unit? The old handheld unit?

17 Q Yeah.

18 A I don't know if we do or don't. I don't think we do. I
19 do not know if we threw that out or we had to turn it in. I
20 do not remember.

21 Q Okay. But at that point, your wife was already making a
22 claim -- or excuse me, Ms. Roop -- I know y'all aren't legally
23 married -- was already making a claim for this accident,
24 correct?

25 MS. COHN: Your Honor --

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1 THE COURT: I don't know if that really affects this
2 motion.

3 MS. COHN: Thank you.

4 THE COURT: You can bring that out at trial.

5 MR. KEENEY: Yeah.

6 THE COURT: Do you have anything else? I was more
7 concerned about other issues about how it operated.

8 MR. KEENEY: Yes, sir. My point was being if --

9 THE COURT: I've got it. Do you have anything else?

10 MR. KEENEY: Nothing further on that, Your Honor.

11 THE COURT: Do you have any redirect?

12 MS. COHN: No, Your Honor.

13 THE COURT: Mr. Barton, thank you for coming here,
14 particularly on short notice. I know I ordered this on
15 Monday. And I gather you're a working man and you had to do
16 this. But, actually, it was really helpful to me. So I'm
17 going to ask you to not talk about your testimony with anybody
18 until our trial is over, and that includes Ms. Roop. All
19 right?

20 THE WITNESS: Yes, sir.

21 THE COURT: If you could just step outside for a few
22 moments, putting your mask back on, and then when we're done,
23 we'll let you know, and then you can leave. Is that all right
24 with you?

25 THE WITNESS: Yes, sir.

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1 THE COURT: Okay. Mr. Keeney, what is precisely your
2 objection now to that testimony?

3 MR. KEENEY: Yes, Your Honor. Well --

4 THE COURT: First of all, did you have an opportunity
5 to depose him?

6 MR. KEENEY: No, Your Honor, I did not take his
7 deposition.

8 THE COURT: That's a different question.

9 MR. KEENEY: I could have asked to take his
10 deposition.

11 THE COURT: But you did not.

12 MR. KEENEY: I did not. Step one on this, if you'll
13 recall our last hearing, I believe it was July 12th or
14 13th, we had a similar issue where the plaintiff claimed
15 Dr. Guerette was going to say he had read the InterStim
16 software, and then you excluded it.

17 THE COURT: Right.

18 MR. KEENEY: July 15th was the first time I was
19 ever informed that Mr. Barton was going to give this testimony
20 in plaintiff's pretrial brief that was filed.

21 THE COURT: Yeah. But you could have deposed him.
22 Wasn't he listed as a witness?

23 MR. KEENEY: Right. But on Rule 26 disclosures, they
24 didn't say he was going to testify about the functionality of
25 the InterStim or the device.

1 THE COURT: Well, you could have asked that, though.

2 MR. KEENEY: Again, the burden is on the plaintiff to
3 disclose under the rules what their individual witnesses are
4 going to testify, the subject of which.

5 THE COURT: And what was disclosed to you?

6 MR. KEENEY: About how the accident happened and then
7 generally, I believe, about her condition after the accident.
8 This is not about her condition after the accident. This is
9 about what a device readout said.

10 THE COURT: Actually, to be precise, it's not true,
11 because you, in your paper, or at least at some point you
12 referenced hearsay. It seems to me that he's not relaying the
13 information. Like, if he was reading a printout, which is
14 what I thought Dr. Guerette was going to do, which to me,
15 frankly, if that had been properly disclosed, this would be a
16 slam dunk case for the plaintiffs. I don't know why we didn't
17 do that in the beginning, but we are where we are.

18 But what Dr. Guerette can say is, he can look at it
19 and say it's operable or not operable. It sounds like it was
20 operable. The battery life is over 50 percent. So all we
21 have is can't change the settings.

22 Now, the impact of that nobody is going to know
23 because neither one of you have an expert to talk about this,
24 right? So, to me, there's no hearsay because it's not
25 projecting information. It's simply, "I couldn't do the

1 settings." Why that is, nobody knows, right? And the import
2 of that, again, nobody is going to know because we don't have
3 expert testimony. So, to me, I think I should let this in.

4 MR. KEENEY: Well, Your Honor, if no one knows the
5 import of it, it's not relevant to any fact at issue.

6 THE COURT: Well, they can argue inferences from
7 that, I think.

8 I mean, look, this is not the way this case should
9 have been tried, but we are where we are now. And so I don't
10 think it's hearsay. There's some relevance -- the relevance
11 is that there is a change in the device from the end of June
12 until the day after the accident. The import of that, you're
13 going to bring that out, right? I'm going to give you free
14 rein to cross-examine both of them about that, particularly in
15 light of what he just said, that every month they would change
16 the settings.

17 Now, the fact that the settings is not operable, what
18 does that do? But I think I have to let that go to the jury.

19 MR. KEENEY: Your Honor, the other thing I would say,
20 it's a violation of the best evidence rule. He could have
21 brought the computer screen or the programming on it. And
22 that's why I asked about when counsel was retained --

23 THE COURT: Right.

24 MR. KEENEY: -- which was before the InterStim was
25 explanted, and they should have kept it, and they could have

1 produced that device and the software readout of it, that it
2 was malfunctioning, just like Ms. Cohn was talking about last
3 time. So what he's really doing is parroting and reading off
4 a reading off a computer screen. And not having the actual
5 device or the printout from it is a violation of the best
6 evidence rule.

7 THE COURT: Well, if he were going to testify about a
8 printout or the readout, I think you would have something
9 there and I think you would be right, which is why I'm denying
10 Dr. Guerette from doing that, right?

11 But his inability to change the settings, I don't
12 think that would fall under that.

13 So I will say this: If she prevails, you're going to
14 get a chance to brief all this posttrial and I'm going to take
15 a hard look at it then. But I'm going to let this testimony
16 in --

17 MR. KEENEY: Yes, sir.

18 THE COURT: -- as it is, and then we'll kind of go
19 from there.

20 I have to tell you something. Have you thought about
21 trying -- now that you know what the evidence is going to look
22 like -- to me, this is a compelling piece of evidence. Have
23 you thought about discussing with your client about a
24 last-minute resolution here? Because you both have
25 significant risks here. And I don't know if she's going to

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1 meet her burden on liability, but even if she does, I could
2 set it aside, because I think there's significant legal issues
3 that I'm going to have to look at.

4 On the other hand, if they hit liability -- and,
5 look, I haven't met Ms. Roop, but I have a feeling the jury is
6 going to be very sympathetic towards her and I think that
7 number is going to be big. Have you thought about that?

8 MR. KEENEY: Have I thought about it? Yes, Your
9 Honor.

10 THE COURT: Have you had any last-minute discussions?
11 I mean, I don't want you to tell me what the substance is.

12 MR. KEENEY: With Ms. Cohn?

13 THE COURT: Yeah.

14 MR. KEENEY: No, Your Honor.

15 THE COURT: All right.

16 MR. KEENEY: Not --

17 THE COURT: We'll try the case, then.

18 MR. KEENEY: Not since she gave me a seven-figure
19 bottom line.

20 THE COURT: Well, I don't want to know numbers. I
21 just said that, right? That's between you-all.

22 Okay. So I'm ruling that Mr. Barton's testimony on
23 this InterStim device -- now, he can testify to more, the
24 other issues. It's just I wanted to hear this today so I
25 understood exactly what was going on. The testimony he gave

1 today, he can give at trial. Do you want to let him know he
2 can leave, because he's probably got to go back to work?

3 MS. COHN: Thank you, Your Honor.

4 (Pause in the proceedings.)

5 THE COURT: All right. Now, I think everybody is
6 okay with the jury instructions, except for, Mr. Keeney, you
7 want to add Virginia Model Jury Instruction that reads, "You
8 must not base your verdict in any way upon sympathy, bias,
9 guesswork, or speculation. Your verdict must be based solely
10 on the evidence, instructions of the Court."

11 I'm understanding that, Ms. Cohn, you don't object to
12 that; is that right?

13 MS. COHN: No objection, Your Honor.

14 THE COURT: So here's what I thought I would do: You
15 have the last version of our instructions. I think I'm going
16 to just add it to the duty to deliberate instruction, which
17 is, for phase 1, Instruction 25 and, for phase 2, Number 10.
18 It's the same instruction. I'm just going to add -- it will
19 be the last thing in that instruction, because I think it fits
20 there.

21 MS. COHN: Your Honor, I did notice on the jury
22 instructions -- sorry, Your Honor -- that the witnesses listed
23 to testify include Teresa Camden and Nathan -- starts with an
24 M. I do not believe they are testifying any longer.

25 THE COURT: Hold on a second. You're talking about

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1 in my voir dire?

2 MS. COHN: Yes, Your Honor, I do believe.

3 THE COURT: Hold on a second. I must have missed
4 that page here. I'm looking at the wrong thing here. I have
5 it.

6 MS. COHN: My apologize to switch gears.

7 THE COURT: It's my fault.

8 Nathan Michaels and Teresa Camden.

9 MR. KEENEY: Correct. I'm not calling them, Your
10 Honor.

11 THE COURT: I'm sorry?

12 MR. KEENEY: They're not witnesses, Your Honor.

13 THE COURT: Okay. So I'm deleting both of them from
14 the voir dire, then, so, okay.

15 Are you okay with me putting -- I'm granting your
16 request to add that Virginia instruction. Are you okay with
17 the placement?

18 MR. KEENEY: That's fine, Your Honor.

19 THE COURT: Okay. Now, the next thing I have is
20 these medical records. Do you-all still have a dispute about
21 the redactions, or did you resolve that?

22 MR. KEENEY: We still have a dispute, Your Honor.

23 THE COURT: Why don't you tell me the dispute is.

24 MS. COHN: May I just grab my laptop quickly?

25 THE COURT: Yeah. Go ahead.

1 MS. COHN: I just didn't want to take any longer for
2 him to get up there.

3 THE COURT: That's fine.

4 And I need to know which exhibits -- you can go
5 back -- which exhibits are we talking about here?

6 MR. KEENEY: Yes, Your Honor.

7 And it is -- they are all for purposes of phase 1.

8 THE COURT: Right.

9 MR. KEENEY: They are Plaintiff's Exhibit Number 7.

10 THE COURT: Hold on a second here. My notebook is
11 coming apart.

12 Number 7.

13 MR. KEENEY: Which are the collective records for the
14 Intimate Wellness Institute of Virginia from October 8th,
15 2019, to January 27th of 2021.

16 THE COURT: Okay. So where am I looking at? What
17 page?

18 MR. KEENEY: And if you go -- the first one is on the
19 December 3rd visit.

20 THE COURT: Can you just tell me the page number? I
21 mean, you gave me records and the exhibits. So what page am I
22 looking at?

23 MR. KEENEY: It is Bates stamp -- it begins on Bates
24 stamp 6, so 7006. It's kind of hard to read on my version.

25 THE COURT: I can't read your Bates stamp. Is there

1 a marking? Is it already redacted?

2 MR. KEENEY: The one that the Court currently has is
3 redacted, and I have unredacted copies for everyone as well.

4 THE COURT: Why don't you pass the unredacted up so I
5 see what we're talking about? And then maybe I can figure out
6 what page we're on.

7 MR. KEENEY: This is the first unredacted one. It's
8 the second unredacted one. There's one more. Here's the
9 third one.

10 THE COURT: All right. Thank you, Tim.

11 So I'm on Exhibit P7, and --

12 MR. KEENEY: Down at the bottom, Your Honor, for the
13 December 3rd visit, do you see the December 3rd visit
14 at -- their dates are on the top right of each page.

15 THE COURT: So I've got -- all right. I've got
16 2/9/22, two of those. No. Where's the dates at?

17 MR. KEENEY: So for each visit, each visit is about
18 five pages. On the first page, it's the top right of each
19 visit. If you go to the very first page of P7, it will say
20 October 28th, 2019, at the top. Not on the ones I handed
21 you, Your Honor.

22 THE COURT: All right. Let me just see if I can
23 match these up somehow so I can figure out where we're at.
24 I'm in P7, though, right?

25 MR. KEENEY: Correct.

1 One, two, three, four, five, six, seven -- it should
2 be the tenth page in; at least it is in my stack, Your Honor.

3 THE COURT: The whole page is not redacted, is it?

4 MR. KEENEY: No, sir. What's redacted is the care
5 plan.

6 THE COURT: All right. I'm still trying to find the
7 page here.

8 I have one now. The one that's -- all right.
9 Where's a marking on this?

10 MR. KEENEY: Your Honor --

11 THE COURT: It's the one that has "assessment,
12 diagnosis, plan, office procedures," and the PNE is redacted
13 out, right?

14 MR. KEENEY: That is not the first one, Your Honor.
15 Do you see up at the top, is there --

16 THE COURT: I'll tell you what, I'm going to give you
17 my binder and you're going to put a sticky on it so I can
18 figure out what I'm doing here.

19 MR. KEENEY: Yes, sir.

20 THE COURT: Put a sticky on the three pages.

21 All right. Thank you, Tim.

22 COURT SECURITY OFFICER: Yes, sir.

23 THE COURT: Let's start with the first one.

24 So what's redacted here is the evaluation plan. I'm
25 going to read it into the record, because we need to have an

1 appellate review of this as well.

2 MR. KEENEY: Yes, Your Honor. And, for the record, I
3 did take PDF pictures and copied and pasted these into my
4 objections to her reformatted witness and exhibit lists, and
5 that was filed.

6 THE COURT: Okay.

7 MR. KEENEY: Which was ECF Number 60.

8 THE COURT: That's good. So then I don't have to
9 worry about reading it.

10 So what you're talking about, it says, "Evaluation
11 plan: Surgery. Replace InterStim. Following procedure I
12 reviewed the results and spent an additional 25 minutes
13 reviewing all findings and treatment options. Patient is
14 noted to have severe overactive bladder and" -- how do you say
15 that?

16 MR. KEENEY: Dyssynergic.

17 THE COURT: -- "dyssynergic voiding. After a
18 comprehensive discussion of options, she'll replace her
19 InterStim, as it is at the end of life, and proceed with
20 pelvic floor therapy. The risks, benefits, and alternatives
21 were fully discussed. She acknowledge understanding."

22 What is that you're objecting to?

23 MR. KEENEY: Well, the plaintiff wants to redact all
24 of that, and there's an overarching theme in all of these, is
25 that my understanding is Dr. Guerette's apparently going to

1 lay the foundation and say all of these records are true,
2 accurate, and complete. But the only things that have been
3 redacted from these records are any reference to the InterStim
4 being at the end of its life or expired.

5 And my position is if the record is going to come
6 into evidence, the entire record needs to come into evidence.
7 There are other points within --

8 THE COURT: I'm in agreement with you. What I'm
9 understanding Dr. Guerette is going to say is, first, he
10 treated her, I guess, up to 2013.

11 MR. KEENEY: Yes, sir.

12 THE COURT: She then comes to see him in October
13 2019. He performs an exam, InterStim is not functioning
14 properly. Why it's not functioning properly he cannot say.
15 Are you in agreement on that?

16 MR. KEENEY: The Court has ruled that he cannot
17 testify to that.

18 THE COURT: Right.

19 MR. KEENEY: So while I think I --

20 THE COURT: Cannot testify as to causation.

21 MR. KEENEY: The Court cannot -- I think the ruling
22 is he cannot testify as to causation.

23 THE COURT: Right.

24 MR. KEENEY: Now, my issue is, within the records
25 there's a number of diagnoses and talks about treatment plans.

1 THE COURT: Right.

2 MR. KEENEY: Within there, it is explicitly said that
3 the InterStim is at its end of life. Nowhere in the records
4 does it say that the accident caused any of these issues.

5 THE COURT: And that should come in. This should not
6 be redacted, okay?

7 MR. KEENEY: That's my whole argument.

8 THE COURT: My perspective is it's either all or
9 nothing. And so, to me, it should all go in. As long as
10 there's nothing that says that the accident caused the
11 InterStim to stop. That's what they're using lay testimony
12 for. They're going to say the InterStim stopped because of
13 the accident. It was fine before, and it didn't work
14 afterwards. That's, essentially, what the case is, right?
15 And the jury will decide that.

16 So is there any other issues that I need look at? To
17 me, just don't redact any of them. Unless there's a -- where
18 he says, "the accident caused it," just put them all in. Now,
19 take out personal identifies, like social security numbers and
20 that kind of stuff.

21 Are you with me, Ms. Roop?

22 MS. COHN: Ms. Cohn?

23 THE COURT: Or Ms. Cohn. I apologize.

24 MS. COHN: We're both Samanthas. It's fine.

25 THE COURT: Okay. Do you want to take your mask

1 down?

2 MS. COHN: I do understand what you're saying, Your
3 Honor, however, I do have a difference of opinion.

4 THE COURT: But it's the same issue throughout,
5 right?

6 MR. KEENEY: As long as Ms. Cohn agrees, it is the
7 same throughout. Do you agree, Ms. Cohn?

8 MS. COHN: The expired InterStim, yes.

9 THE COURT: Okay. Go ahead.

10 What's your take there, Ms. Cohn?

11 MS. COHN: So, Your Honor, the plaintiff's position
12 and why that was specifically done was not to prejudice the
13 defendant at all. It was during the Court's previous rulings
14 in two transcripts from previous hearings, as well as orders,
15 that it was clear from the Court's words that "expired
16 InterStim" was not to be said and was causation and was --

17 THE COURT: I don't think I said that about the
18 "expired." I said he can't say why it's not working. I said
19 he could talk about that it's not functional. Actually, I
20 read the transcripts again last night, just to make sure I
21 wasn't missing something.

22 But if I got something wrong, you tell me.

23 MR. KEENEY: So, Your Honor, on page 38 of the
24 July 12th --

25 THE COURT: Hold on a second. Page 38. Just give me

1 a second.

2 MR. KEENEY: No worries, Your Honor.

3 THE COURT: Go ahead. What line am I looking at?

4 MR. KEENEY: You're looking at the bottom three
5 lines, Your Honor, on page 38. Specifically, Mr. Keeney
6 asked, "In 2019, his diagnosis is expired InterStim. Am I
7 allowed to have him say that, that it was expired, or does
8 that open the door?"

9 THE COURT: And I said it's up to him. It will open
10 the door.

11 You can only say -- here's what you can do: If it
12 says "expired" -- to me the issue is why is it not working,
13 right? And expired can mean -- it also means nonfunctioning,
14 right? So you could ask him, "When you wrote 'expired,' does
15 that also mean it just wasn't working?" You can't ask him why
16 it wasn't working, right?

17 MS. COHN: So can I discern the difference, Your
18 Honor, between nonfunctioning and ceased to have functioned?

19 THE COURT: You can say expired can include no longer
20 functioning. Whatever reason, you can't go into it.

21 MS. COHN: I understand the reason. But there's a
22 difference between functioning properly and ceasing to
23 function.

24 THE COURT: Yeah, but he can't say that it ceased.
25 He can say that it was not operable, okay? Why it wasn't

1 operable, whether it expired due to natural -- its natural
2 life or there was an intervening event, he cannot say.

3 MS. COHN: The crux of it for me, Your Honor, is the
4 difference between it not working, period, and it's still
5 functioning, just not properly. So can he say it was
6 improperly functioning?

7 THE COURT: Is that from his own observation?

8 MS. COHN: Yes.

9 THE COURT: Yes, from his own observation, he can
10 look at it and say -- it's kind of like what Mr. Barton just
11 testified, right? Mr. Barton can say, "I went to do it, and I
12 couldn't operate the changes -- the settings change," right?

13 Now, why that happened and what the consequence of
14 that is, neither he nor Dr. Guerette can say, right?

15 But what I'm saying is, all the records are coming
16 in, but I don't want to mislead the jury, you know, due to the
17 evidentiary rulings here. Expired encompasses it not
18 functioning properly. Why that's true, though, he cannot
19 opine.

20 MS. COHN: That is fine, Your Honor. Thank you very
21 much for the clarification. I simply wanted to make it clear
22 to the Court I was not attempting to prejudice the defendant.

23 THE COURT: I know that.

24 MS. COHN: It was simply the Court's rulings.

25 So he can state that -- can he state what his

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1 definition of expired is in these terms regarding this case?

2 THE COURT: He can say that includes a
3 nonfunctioning -- a not properly functioning device.

4 MS. COHN: And in this case, that's what I meant by
5 expired?

6 THE COURT: The word "expired" includes non -- it
7 wasn't functioning properly.

8 MS. COHN: Pertaining specifically to Ms. Roop?

9 THE COURT: Yes.

10 MS. COHN: Thank you, Your Honor.

11 THE COURT: Hold on a second.

12 Mr. Keeney, do you have anything you want to comment
13 on that?

14 MR. KEENEY: No, Your Honor.

15 THE COURT: Okay. So that's where we're at.

16 MS. COHN: Sorry. Being a lawyer and mincing words.

17 THE COURT: Listen, this is a tight line you're going
18 to have to walk, because I'm letting you do this on the lay
19 testimony. We'll see how it goes.

20 MS. COHN: It's going to go great.

21 THE COURT: We'll see.

22 Let me just go down. Is there anything else on the
23 medical records, then, Mr. Keeney? So it's all coming in
24 unless there's something that says about causation. If
25 something says, "Accident caused this," okay?

1 MR. KEENEY: Yes, Your Honor. Ms. Cohn and I can
2 talk about this, the same thing happened in the surgical
3 records, but I don't think those were coming in in phase 1
4 anyway.

5 MS. COHN: Those were solely for phase 2, because
6 they do not go to causation. From my perspective, the surgery
7 records were equal to the big bills coming in in phase 1
8 because they are very in depth. So I did not want to
9 introduce them in phase 1 where it could sway with sympathy or
10 bias, because it's not as to causation.

11 THE COURT: Let me ask you this: So I need now to
12 replace the medical records, because the ones -- the book that
13 I have is with the redacted ones. I'm going to give the book
14 back to you and you'll put in the unredacted versions into my
15 book, and that will be the ones that will go into evidence.
16 Everybody in agreement on that?

17 MS. COHN: Yes, Your Honor.

18 MR. KEENEY: Yes, Your Honor.

19 MS. COHN: When would you like that back by, Your
20 Honor?

21 THE COURT: Any time by the end of next week. I
22 don't care. Just deliver it to Ms. Garner so I have it.

23 No. No. That goes to Ms. Cohn. Ms. Cohn is going
24 to deliver it to Ms. Garner.

25 MR. KEENEY: Will you make me a copy, and then you're

1 going to do --

2 MS. COHN: I do all the binders, yes. We already
3 have them ready.

4 MR. KEENEY: You just have to switch them.

5 MS. COHN: Yes.

6 THE COURT: Okay. So we'll have seven also for the
7 jury, then, too, one for each of the jurors.

8 MS. COHN: Give me one moment?

9 How many binders so we have?

10 UNIDENTIFIED FEMALE VOICE: 11.

11 MS. COHN: We have 11.

12 THE COURT: Excellent. That's perfect.

13 Let me see what other issues I have.

14 MS. COHN: We simply wanted to wait, Your Honor, to
15 hear about the decision on these records before bringing them
16 all to the Court.

17 THE COURT: I'm with you. I'm with you.

18 The exhibit lists, are they still okay?

19 MS. COHN: Nothing has changed.

20 MR. KEENEY: They should be fine, Your Honor.

21 THE COURT: Good.

22 I was going to go over just as to how this is going
23 to work a little bit with you guys, just so we're all on the
24 same page. So why don't you have a seat. Is there anything
25 else in dispute I need to resolve?

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1 MS. COHN: I don't there are necessarily any --

2 THE COURT: Can you just remove the mask because the
3 court reporter --

4 MS. COHN: I'm so sorry. At least I'm not fainting
5 this time --

6 THE COURT: That's all right.

7 MS. COHN: -- so that's a plus.

8 THE COURT: Well, we still have some time to go.

9 Go ahead.

10 MS. COHN: Thank you, Your Honor. That makes me feel
11 good.

12 I did have a couple of more issues that I would just
13 like to present to the Court to get a decision on before
14 moving forward.

15 THE COURT: Okay. Go ahead.

16 MS. COHN: Thank you, Your Honor.

17 Your Honor, given the fact that there are no bills or
18 financial statements or damages to be introduced in phase 1, I
19 would request that the defense is not allowed to discuss the
20 addendum in phase 1, opening or closing.

21 THE COURT: Absolutely. Why would you do that?

22 MR. KEENEY: Because it goes to their bias and whole
23 motivation for bringing the lawsuit and claiming all of this.
24 They're here because they're asking for millions of dollars,
25 and they're asking this jury to find that it's related so then

1 in phase 2 they can get millions of dollars.

2 THE COURT: Actually, no, he's right about that. Why
3 can't he cross-examine Ms. Roop and Mr. Barton about that?

4 MS. COHN: I'm not saying he cannot in phase 2.

5 THE COURT: No, in phase 1. He's right. Look, this
6 whole case, to me, is the causation. Because if you win on
7 causation, the jury is going to come -- the number is going to
8 be huge, right?

9 And I'm going to tell you, I think I've stretched the
10 limit here on this, because of the issues that we've already
11 addressed, to the point that I may -- I'm not saying I
12 would -- if you win, I still could reverse this. I just want
13 to see how everything plays out first.

14 The whole evidence from my perspective on causation
15 is lay testimony from the plaintiff and her boyfriend. And I
16 think her boyfriend, from having heard his testimony today,
17 might be the most important testimony in the trial. They both
18 have an incentive, as he just made clear to me, to say what
19 they're saying, and there's no corroborative evidence because
20 there's no printouts or anything like that. So I think I'm
21 going to allow him to make that point.

22 MS. COHN: Your Honor, I think that that somewhat,
23 then, prejudices the plaintiff, because obviously that amount
24 of ask is based on the medical expenses and the medical bills
25 and things of that nature and the damages she suffered, which

1 are also financial in nature. And so if the defense gets to
2 gets bring up financial matters in phase 1 but the plaintiff's
3 hands are bound and tied and cannot, it seems to be very
4 one-sided almost.

5 THE COURT: But what's the relevance of you
6 introducing that in phase 1? Theirs is bias, right?

7 MS. COHN: But that's my point, Your Honor, is that
8 there is no relevance in phase 1 as causation. Now, if he
9 wants to argue a financial motive, obviously that would be
10 acceptable. However, I think if he's going to put numbers on
11 it based on what, you know, the plaintiff has asked for
12 reasonably, given the medical specials that she's incurred and
13 things of that nature, the financial detriment, I don't think
14 it would be fair for him to present exact figures and the
15 plaintiff be bound to present none. If he wants to present
16 financial motive, I understand that wholly.

17 THE COURT: I think the answer is this: If he brings
18 that out, you on -- so if he says, "Ms. Roop, you've made
19 a" -- what's the demand here?

20 MS. COHN: 5 million.

21 THE COURT: 5 million, and that's it. Like, you're
22 not going to go into breakdowns. You would just say, "Your
23 lawsuit seeks \$5 million. You have a \$5 million interest in
24 testifying." Same with -- and Mr. Barton, I guess they live
25 together; is that right?

1 MS. COHN: They're very much married for all intents
2 and purposes.

3 THE COURT: Right. So they both have a \$5 million
4 incentive. You, then, on redirect can say, "That number is
5 based upon your medical treatment and expenses and such,"
6 right? It's not just -- it's not a lottery number made up.
7 That's it.

8 MS. COHN: Okay.

9 THE COURT: All right?

10 MS. COHN: As long as I can just clarify. As long as
11 I have some leeway to clarify that a little bit.

12 THE COURT: Right. And if I have to, I'll instruct
13 the jury in the middle of it just to make sure it's not
14 misleading. We're not going to beat a dead horse on that,
15 though. You can bring out that it's not just a magical
16 number. It's based upon medical stuff that we would deal with
17 in phase 2, if we get there.

18 MS. COHN: I appreciate the clarification, Your
19 Honor.

20 THE COURT: What I'll probably do, if you -- when
21 he's cross-examining her, I'll probably jump in and give an
22 instruction to the jury saying what's going on here.

23 MS. COHN: Thank you, Your Honor.

24 THE COURT: Your point is well taken.

25 MS. COHN: Your Honor, didn't make a statement

1 specifically, but is it correct to just have the surgeries in
2 phase 2?

3 THE COURT: Yes.

4 MS. COHN: Okay. And then --

5 THE COURT: That are a result of the accident if they
6 find causation.

7 MS. COHN: Correct.

8 THE COURT: You're going to have to put on some
9 evidence to say that that treatment was medically necessary.

10 MS. COHN: Well, Your Honor, under Virginia law,
11 bills and --

12 THE COURT: I guess it's presumed.

13 MS. COHN: It's presumed reasonable and necessary.
14 It's a rebuttable presumption.

15 THE COURT: Yeah, but it still has to be connected to
16 the accident.

17 MS. COHN: Well, that's causation in phase 1.

18 THE COURT: Right. Well, I think it's a little more
19 than that. I think it's three parts. Part 1 is: Did the
20 accident cause the pelvic prolapse/InterStim device not
21 working? Dr. Guerette can say, "I looked at the device. It
22 wasn't functioning."

23 Mr. Barton is saying, "I observed it the next day.
24 It wasn't functioning as it was a couple weeks before."

25 Jury finds that. Okay.

1 Then the next thing is: Well, what treatment does
2 she need to address that? And if Dr. Guerette is going to
3 say, "Her options were X, Y, Z, and we believe the best course
4 of treatment was X, was, you know, getting the surgeries,"
5 then all the bills come in.

6 MS. COHN: That's what he's going to say, Your Honor.

7 THE COURT: So, to me, it's a three-part thing.

8 MS. COHN: Okay.

9 THE COURT: And you'll have room to cross-examine on
10 that, too, Mr. Keeney.

11 But go ahead.

12 MS. COHN: And then the last question, Your Honor,
13 given that Guerette is a lay witness treating physician -- and
14 I do apologize; I didn't grab the case. My apologies. The
15 case that I presented in the motion in limine rebuttal was
16 that *Springs v. Waffle House* case. And there's been some
17 argument, but I haven't been able to discern a definitive
18 ruling as to exactly what Dr. Guerette can testify to. And
19 from the reading of that case, it is the --

20 THE COURT: I don't care about that case. I care
21 about my ruling.

22 What I have ruled is this: That he can, first of
23 all, talk about her treatment of her -- I guess it was up to
24 2013?

25 MS. COHN: Uh-huh.

1 THE COURT: I guess, what, she had a child, she had
2 bladder issues, and they decided to put in this InterStim
3 device. He last sees her in 2013. Everything was fine,
4 essentially. I'm paraphrasing.

5 She comes to see him in 2019. She's reporting pain
6 in her pelvic area, he performs an examination, and then he
7 will describe what the examination revealed, including the
8 functionality of the InterStim device, and then he made some
9 conclusions about the type of treatment that she needed, and
10 this is what the treatment is that -- path that he chose with
11 her.

12 MS. COHN: More specifically, Your Honor, I'm
13 looking --

14 THE COURT: Well, for phase 1, it is simply -- it's
15 going to end with, "I examined her, and this was the nature of
16 her injuries that I observed, and the InterStim device was
17 nonfunctional, it expired, whatever. Expired means --
18 includes nonfunctioning." And that's it, though. He can't
19 say beyond that.

20 MS. COHN: Well, when it comes to nature of injuries,
21 as I argued in my motion in limine, does that include
22 diagnosis at that time?

23 THE COURT: Yes.

24 MS. COHN: Okay. That was it. Thank you.

25 THE COURT: He can't testify to causation of the

1 injuries.

2 MS. COHN: Correct. I understand that loud and
3 clear, Your Honor.

4 THE COURT: Did you have anything else before I get
5 into just how things are going to operate, Mr. Keeney?

6 MR. KEENEY: I don't think so, Your Honor. The
7 only -- and because of how we're doing this, it's a little bit
8 of gray area, because there is a world where the jury could
9 say the initial Dr. Guerette treatment is related but not the
10 stuff after the 10-month gap, so we will have to talk about it
11 a little bit. Because on the final verdict form for phase 1,
12 the jury is to give a date of how long they recognize
13 treatment.

14 THE COURT: Right. Okay. At the last hearing, I had
15 asked to see if you agreed to the money amount for the
16 injuries that are not in dispute, and I believe it was a
17 decision of \$30,000; is that correct?

18 MR. KEENEY: Yes, Your Honor. That encompasses the
19 first two emergency room visits and the one PCP visit.

20 THE COURT: So I think what my question to you is
21 this: Should we put that in the verdict form or should I
22 leave it as is?

23 MR. KEENEY: You mean the phase 2 verdict form?

24 THE COURT: Yes, in terms of the damages. Because it
25 doesn't -- this goes back to what my question is, is that

1 if -- you know, if they win it all and I decide that I have to
2 reverse on the injuries in dispute, I think it's good for us
3 to know -- have the jury say, okay, these injuries are not in
4 dispute. That amount is 30,000, whatever you guys came up
5 with, and then the rest that are in dispute, the value is X.

6 MR. KEENEY: Your Honor, on the verdict form that we
7 already have, I think you already did this.

8 THE COURT: I already did this? I'm ahead of myself.

9 MR. KEENEY: So undisputed injuries, we have past
10 medical expenses of \$30,000 and change already written in, and
11 then other damages based on --

12 THE COURT: All right. We already did it, then.

13 MR. KEENEY: Right.

14 THE COURT: Okay. That's perfect. I'm ahead of
15 myself. All right. Good.

16 So you have nothing else, then? All right. Perfect.

17 So I just want to go over again how we're going to do
18 things around here. All right? You know my legal rulings
19 already; I'm not going to go over those again.

20 So let's talk about jury selection first, okay?

21 By the way, one of our jurors asked to be excused,
22 it's juror 15 on panel 1, Thomas Seagraves. And I have
23 excused him because he just performed jury service in the
24 state and missed some work, and he didn't want to miss work
25 again. And I didn't think we should tax him a second time.

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1 Did you have any objection to that, Ms. Cohn?

2 MS. COHN: No objection, Your Honor.

3 THE COURT: Mr. Keeney?

4 MR. KEENEY: No objection, Your Honor.

5 THE COURT: So we have 13 [sic] panels. There were
6 16 each, now the first panel is 15. By the way, my guess is
7 that between now and jury selection, we'll have a couple more
8 jurors that will say that they can't serve for whatever
9 reason. And if I think it's appropriate -- if it's a slam
10 dunk decision that they should be excused, I just excuse them,
11 and then I'll enter an order so you know I excused them. If
12 it's a close call, I make them come in and we'll deal with it.

13 So we'll bring the three panels in. The first panel
14 is to report at 9:00 a.m. They will be brought into the
15 courtroom about 9:30. I will take the bench at 9:25. So
16 you-all need to be in place by 9:25 ready to go, all right?

17 Then the same will be true for the panel at
18 11:00 a.m. They'll be brought in at 11:30, and then 1:00 p.m.
19 for 1:30. Although, I'm pretty sure we'll have our jury from
20 this by the time we get to the second panel.

21 Again, we'll be picking seven jurors. Each of you
22 have three peremptory strikes. I have incorporated the
23 appropriate questions that you submitted from voir dire into
24 my script, which I have now given you. We'll update that
25 script to -- well, I won't file it again. I'm just going to

1 strike out Michaels and Camden, right? I just handwrote that
2 in.

3 They will be brought in, they're going to sit in the
4 public area, all right? Once they're there, I will then read
5 the script. All right? So we'll get answers from every one
6 of them about those questions. All right?

7 And then after that, Ms. Garner shuffles the deck,
8 and we will call up the jurors one by one to the witness
9 stand -- or the jurors will be brought up to the witness
10 stand. They are remaining masked while they do the general
11 questioning. But once they get to the witness stand, as we
12 did with Mr. Barton today, they'll be asked to take their mask
13 down if they feel comfortable, so you can see their faces,
14 first of all.

15 Then I will ask any appropriate follow-up that I need
16 to ask based upon their responses to the general questions,
17 and when I am done, we will then put on these headsets. You
18 should have one there, and when we're done, you should do a
19 test run with Ms. Garner if you haven't already done that,
20 okay?

21 Essentially, a headset is equivalent to what used to
22 be a sidebar back when I tried cases, right? And so what
23 we'll do is we put the headsets on.

24 I will start with you, Ms. Cohn, first, and I'll say,
25 "What says the plaintiff?"

1 Now, you really have two options at that point.

2 Well, you have three options. One is if there's a reason for
3 cause that comes up, you would make the cause motion then. I
4 generally handle that on that own, though. If it's a close
5 call -- we have more than enough jurors. If it's a close
6 call, I just excuse them.

7 But if there is a cause for either one of you, that's
8 when you say it with the headset, okay?

9 I think it's generally wise to cover this so the
10 jurors can't read your lips, so to speak, right? And I'll
11 say, "What says you?" You can either say "for cause," and
12 tell me why. You can say "strike," which means I'm exercising
13 my peremptory, or "accept," okay?

14 If she says "accept," Mr. Keeney, I'll turn to you
15 and I'll say, "What says the defense?" You will then say
16 either "cause," "strike," or "accept." All right?

17 If you both say "accept," they're accepted. I will
18 tell them they've been selected for the jury.

19 I will tell you there's no back striking. So once
20 you both say "accept," they're on the jury.

21 So it's not like, hey, you only used one of your
22 strikes and you're like, "Oh, I wish I had done that on Juror
23 Number 2. Let's go back and do that." You can't do that,
24 right?

25 Because what I found out during COVID, our real

1 problem is the elevators; we can't release them all at the
2 same time. So if you-all say "accept," I will say, "You've
3 been selected. You'll report here tomorrow no later than
4 9:00 a.m. We're going to start at 9:30." I'm going to tell
5 them it's a two-day trial. You probably saw that in the
6 script.

7 And we give them a written handout that tells them
8 what to do if they start getting sick, you know, if they have
9 COVID symptoms, call this number. It also tells them not to
10 talk about the case and stuff like that. And if you want,
11 Ms. Garner can print the handout for you and give it to you
12 today if you want to look at it. But it's nonconsequential.
13 And I orally go over everything except for the phone number
14 anyhow.

15 If they're stricken, I just thank them for their
16 service, and they go.

17 And we're going to do that until we exhaust the
18 panel. If we need more jurors until we get to seven, we'll go
19 it to the next panel, and then so forth until the end, all
20 right? They're told to come back the next day.

21 Does anybody have any questions at all, Ms. Cohn,
22 about how we're going to do this?

23 MS. COHN: None, Your Honor.

24 THE COURT: Mr. Keeney?

25 MR. KEENEY: No, Your Honor.

1 THE COURT: I want to talk to you about publishing
2 stipulations. Now, thankfully, you-all did what I asked you
3 to do which was to stipulate to a lot of the information
4 that's not in dispute. The stipulations are not in until they
5 are published.

6 So, Ms. Cohn, this really goes for you. So when you
7 get to the point that you want to introduce a stipulation, all
8 you do is you turn to me and say, "Your Honor, I would like to
9 publish Stipulation Number 1," okay? At that point, I read
10 the stipulation to the jury.

11 When I do the first one, I will explain to them what
12 a stipulation is. All right? And then we kind of go from
13 there. Do you understand that, Ms. Cohn?

14 MS. COHN: Yes, Your Honor.

15 THE COURT: Mr. Keeney?

16 MR. KEENEY: Yes, Your Honor.

17 THE COURT: Now, so none of the exhibits now are in
18 dispute, right? Because I've already ruled now. So you'll
19 have a binder for each. What we'll do is the jury is going to
20 be seated in the jury box. What we're going to do, we're
21 going to alternate. 1 will be at the end, Number 2 will be at
22 the -- the second chair of the back. We're going to like
23 zigzag the whole way, so that there's like a chair in between.
24 You understand?

25 THE CLERK: Yes, sir.

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1 THE COURT: So we'll leave a binder and that will be
2 their binder there going forward.

3 I think I told you before, openings will be 15
4 minutes, closings are 30 minutes. I'm a maniac about time.
5 So 30 minutes, you're done. All right?

6 Do you-all have any other questions?

7 Ms. Cohn, anything else you want to raise? Speak now
8 or forever hold your peace, as they say.

9 MS. COHN: I am content, Your Honor. Thank you.

10 THE COURT: Mr. Keeney?

11 MR. KEENEY: Your Honor, as far as actually moving in
12 the exhibits at trial, would it be all right if the Court,
13 just at the beginning of evidence, we agreed they were all
14 admitted?

15 THE COURT: Well, you can do it right now. Do you
16 want to agree that they're all in?

17 MR. KEENEY: I mean, just to speed things up.

18 MS. COHN: Yes. I mean, we've agreed to them, so --

19 THE COURT: So all the exhibits that you've given me
20 in the exhibit list, that's on the exhibit list will be
21 admitted.

22 MR. KEENEY: Once Ms. Cohn -- once we give you the --

23 THE COURT: The final version.

24 MR. KEENEY: -- the final copy as we discussed today.

25 THE COURT: Right. They're all admitted.

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1 MS. COHN: Perfect.

2 THE COURT: So you don't have to ask to admit them.
3 You don't have to lay the foundation. We just want to keep
4 moving, right? And we'll kind of go from there.

5 MR. KEENEY: That's exactly my point, Your Honor.

6 THE COURT: Okay. Did you have anything else,
7 Mr.Keeney?

8 MR. KEENEY: That's it, Your Honor.

9 THE COURT: I look forward to seeing you-all, then, a
10 week from Monday. Okay?

11 MS. COHN: Have a good holiday weekend, Your Honor.

12 THE COURT: You too.

13 MR. KEENEY: Your Honor, I guess one last thing. If
14 we get -- we're going to have to do phase 2 regardless. If we
15 get -- were you going to automatically divide it up into two
16 days, or if we get through phase 1 quickly, we'll go --

17 THE COURT: No, we'll go straight to phase 2. No, I
18 want to keep moving.

19 I can't do it with the jurors because of COVID.

20 MR. KEENEY: Right.

21 THE COURT: You know, we used to pick the jury and go
22 straight to openings. We can't do that because of COVID.
23 But, you know, when the jury comes back on causation, we get
24 that verdict, you know, depending on where they are with
25 breaks and lunch and stuff, I'll probably give you 15 minutes

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1 or something like that, and then we'll get started again.

2 MS. COHN: I would prefer that, Your Honor. I've
3 only blocked off Dr. Guerette for the 13th.

4 THE COURT: We want to keep moving.

5 MS. COHN: He is costly.

6 THE COURT: That's okay. Well, you want \$5 million,
7 that's why he's costly. I think we're done.

8 (Court recessed at 3:09 p.m.)

9 CERTIFICATE

10 I, Melissa H. Custis, certify that the foregoing is
11 a correct transcript from the record of proceedings
12 in the above-entitled matter.

13

14 /s/ Melissa H. Custis, RPR

Date: 09/28/2022

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil No. 3:21cv675 (DJN)

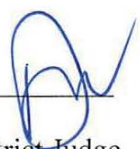
NICHOLAS JAMES DESOUSA,
Defendant.

ORDER
(Directing Clerk to File Revised Jury Instructions)

This matter comes before the Court following Defendant's request to amend the jury instructions to include Virginia Model Jury Instruction 2.220. Plaintiff does not object to this request. Consequently, the Court hereby GRANTS Defendant's request and adds Virginia Model Jury Instruction 2.220 to Instruction No. 25 for the first phase and Instruction No. 10 for the second phase, as agreed by the parties. The Court further DIRECTS the Clerk to file the revised jury instructions as Attachments 1, 2 and 3 for this Order.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.

/s/ 
David J. Novak
United States District Judge

Richmond, Virginia
Date: September 6, 2022

Attachment 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil Action No.: 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.

THE COURT'S JURY INSTRUCTIONS ON CAUSATION (PHASE 1)

- 1 Opening Instruction
- 2 Province of the Court and Jury
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Instruction No. 1

Opening Instruction

Ladies and Gentlemen of the jury, you have now heard all of the evidence in this case as it relates to the first phase, that is, the liability phase, of the case. The Court will now give you the instructions of law that you are to apply in deciding this case.

You will be able to take these written instructions into the jury room with you when you deliberate; nevertheless, I would appreciate your full attention as I read them to you.

Instruction No. 2

Province of the Court and Jury

It is your duty to follow the law as I state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

Counsel may properly refer to some of the applicable rules of law in their closing arguments. If, however, any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

No statement or ruling or remark that I may make during the course of the trial is intended to indicate my opinion as to what the facts are. It is the function of the jury to consider the evidence and determine the facts in this case. You, not I, have the duty to determine the facts.

The evidence which you are to consider consists of testimony of witnesses, any exhibits admitted into evidence, and any facts agreed upon between the parties and presented to you in the form of a stipulation. The admission of evidence in court is governed by rules of law; and from time to time, it may be the duty of the attorneys to make objections and my duty as judge to rule on those objections and decide whether or not you can consider certain evidence. You must not consider testimony or exhibits to which an objection was sustained, or which has been ordered stricken. If an objection was overruled, then you may consider that evidence together with all other evidence in the case. The opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and in

applying the law, but their statements are not in evidence.

You have been chosen and sworn as jurors in this case to try the issues of fact. You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be controlled by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Instruction No. 3

Outline of the Instructions

Before I begin going through the instructions with you, I want to describe for you how they are set up and how you should generally approach your duties.

As I just noted, you are the finders of the facts. The first part of these instructions provides you with the tools to determine the facts. The instructions that follow pertain to the substance of the dispute. The final instructions will inform you about the mechanics of carrying out your responsibilities.

The issue in this first phase of the case is:

Did the Defendant's negligence cause the Plaintiff's injuries?

And, if yes, which injuries did the Defendant's negligence cause?

Your decision on this issue must be governed by these instructions.

Instruction No. 4

Evidence Received in this Case

The evidence in the case consisted of the following:

1. The sworn testimony of the witnesses, no matter who called a witness.
2. All exhibits received in evidence, regardless of who may have produced the exhibits.
3. All facts that have been agreed to through stipulation.

Statements and arguments of the lawyers are not evidence in the case, unless made as an admission or stipulation of fact. A "stipulation" is an agreement between both sides that certain facts are true. When the lawyers on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved. However, it is for you to determine the effect, if any, to be given that stipulation.

If I sustain an objection to any evidence or if I order evidence stricken, that evidence must be entirely ignored.

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other purpose.

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the statements of the witness. In other words, you are not limited solely to what you see and hear as the witnesses testified.

You may draw from the facts that you find have been proved such reasonable inferences or conclusions as you feel are justified in light of your experience and common sense.

Instruction No. 5

Judging the Evidence

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair construction in light of your common knowledge of the natural tendencies and inclinations of human beings.

Instruction No. 6

Objections and Rulings

It is the sworn duty of the attorneys on each side of a case to object when the other side offers testimony or exhibits which that attorney believes is not properly admissible. Only by raising an objection can a lawyer request and obtain a ruling from the Court on the admissibility of the evidence being offered by the other side. You should not be influenced against an attorney or his client because the attorney has made objections.

Do not attempt, moreover, to interpret my rulings on objections as somehow indicating to you what I believe the outcome of the case should be.

Instruction No. 7

Court's Questions to Witnesses

During the course of the trial, I have occasionally asked questions of a witness. Do not assume that I hold any opinion on the matters to which my questions related. The Court may ask a question simply to clarify a matter — not to help one side of the case or to hurt another side.

Instruction No. 8

Jury's Recollection Controls

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence in this case.

Instruction No. 9

Direct and Circumstantial Evidence

Generally, there are two types of evidence that are presented during a trial — direct evidence and circumstantial evidence. "Direct evidence" is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. "Indirect" or "circumstantial" evidence is proof of facts and circumstances indicating the existence or nonexistence of a fact.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence. You are simply required to weigh all the evidence in the case.

Instruction No. 10

Inferences from the Evidence

Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in this case.

Instruction No. 11

The Question Is Not Evidence

The questions asked by a lawyer for either party to this case are not evidence. If a lawyer asks a question of a witness which contains an assertion of fact, therefore, you may not consider the assertion by the lawyer as any evidence of that fact. Only the answers are evidence.

Instruction No. 12

Credibility of Witnesses

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Instruction No. 13

Parties' Testimony to Facts Within Their Own Knowledge

When one of the parties testifies unequivocally to facts within his or her own knowledge, those statements of fact and the necessary inferences from them are binding upon him or her. He or she cannot rely on other evidence in conflict with his or her own testimony to strengthen their case.

However, you must consider his or her testimony as a whole, and you must consider a statement made in one part of his or her testimony in the light of any explanation or clarification made elsewhere in his testimony.

Instruction No. 14

Impeachment — Inconsistent Statement or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

Any act or omission is "knowingly" done, if the act is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Instruction No. 15

Effect of Prior Inconsistent Statements or Conduct

If you believe from the evidence that a witness previously made a statement inconsistent with their testimony at this trial, the only purpose for which the statement may be considered by you is for its bearing on the witness's credibility. It is not evidence that what the witness previously said is true.

When the witness is a party to this case, and you believe from the evidence that the witness previously made a statement inconsistent with their testimony at this trial, that previous statement may be considered by you as evidence that what the witness previously said was true.

Instruction No. 16

What Is Not Evidence

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of the lawyers, questions and objections of the lawyers, testimony that I instructed you to disregard, and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Instruction No. 17

Defendant's Admission of Liability

The Defendant has admitted that he is liable for any injury the Plaintiff received from the accident. Therefore, the only issue that you have to decide is what injuries the Plaintiff sustained as a result of the subject accident.

An admission of liability should not influence you in any way in considering the issue of damages or what injuries plaintiff sustained in the accident.

Instruction No. 18

Burden of Proof

The preponderance of the evidence is sometimes called the greater weight of the evidence. It is the evidence which you find more persuasive. The burden is on the Plaintiff, Samantha Roop, to prove by the greater weight of the evidence each injury that she claims and to prove that each injury was caused by the negligence of the Defendant, Nicholas Desousa. If the Plaintiff fails to do so, then she cannot recover for that item.

“The preponderance of the evidence,” means evidence, which as a whole, shows that the fact sought to be proved is more probable than not. In other words, a preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force, and produces in your mind a belief that what is sought to be proved is more likely true than not true. This standard does not require proof to an absolute certainty, given that proof to an absolute certainty is seldom possible in any case. Furthermore, the testimony of one witness whom you believe can alone constitute the greater weight of the evidence.

In determining whether any fact in issue has been proved by a preponderance of the evidence, unless otherwise instructed, you may consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

Instruction No. 19

Proximate Cause

A proximate cause of an injury is a cause that, in natural and continuous sequence, produces injury. It is a cause without which the injury would not have occurred.

Instruction No. 20

Injury Must Have Been Reasonably Foreseeable

The Defendant is not required to have anticipated or foreseen the precise injury that occurred, but it is sufficient that a reasonably prudent person would have anticipated or foreseen that some injury might probably result from the negligent act.

Instruction No. 21

Pre-Existing Condition

If you find that the Plaintiff had a condition before the accident that was aggravated as a result of the accident or that the pre-existing condition made the injury that she received in the accident more severe or more difficult to treat, then, if you find your verdict for the Plaintiff, she may recover for the aggravation and for the increased severity or difficulty of treatment, but she is not entitled to recover for the pre-existing condition.

Instruction No. 22

Mitigation of Damages

The Plaintiff has a duty to minimize her injuries. If you find that the Plaintiff did not act reasonably to minimize her injuries and that, as a result, they increased, then she cannot recover the amount by which they increased.

Instruction No. 23

Juror Use of Electronic Communication Technologies

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, tablet, blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, Instagram, MySpace, LinkedIn, YouTube or Twitter to communicate to anyone any information about the case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case, because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations, because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

Instruction No. 24

Election of Foreperson

Upon retiring to the jury room, you will select one of you to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

A verdict form has been prepared for your convenience.

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form that sets forth the verdict upon which you unanimously agree. You will then return your verdict to the courtroom.

Instruction No. 25

Duty to Deliberate

The verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without disregard of individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times that you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

I again remind you that you must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely on the evidence and the instructions given by the Court.

Instruction No. 26

Jury's Responsibility

Nothing said in these instructions and nothing in any verdict form prepared for your convenience is meant to suggest or convey in any manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Instruction No. 27

Communications Between the Court and Jury

If it becomes necessary during your deliberations to communicate with me, you may send a note by a court security officer, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me by any means other than a signed writing. I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

The court security officers, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person — not even to me — how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Attachment 2

JA373

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil Action No.: 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.

THE COURT'S JURY INSTRUCTIONS ON DAMAGES (PHASE 2)

- 1 Continuing Effect of Instructions
- 2 Types of Compensatory Damages
- 3 Amount of Damages Requested Is Not Evidence
- 4 Burden of Proof
- 5 Mitigation of Damages
- 6 Effect of Insurance or Benefits
- 7 Pre-Judgment Interest
- 8 Juror Use of Electronic Communication Technologies
- 9 Role of Foreperson
- 10 Duty to Deliberate
- 11 Jury's Responsibility
- 12 Communications Between the Court and Jury

Instruction No. 1

Continuing Effect of Instructions

In the first phase of this trial, I provided you with instructions on what constitutes the evidence in this case, weighing and evaluating the evidence, and the meaning of “preponderance of the evidence.” Those instructions apply with equal force in this phase of the case. I will provide you with a written copy of those instructions for your deliberations. Additionally, you will be able to take these written instructions into the jury room with you when you deliberate.

In your deliberations, you may consider all of the evidence you have heard, unless it has been stricken. It does not matter whether it was introduced by the Plaintiff or the Defendant, or whether it was introduced in the first or second phase of this trial.

Instruction No. 2

Types of Compensatory Damages

In determining the damages to which the Plaintiff is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the Defendant:

- (1) any bodily injuries that the Plaintiff sustained and their effect on her health according to their degree and probable duration;
- (2) any physical pain and mental anguish that the Plaintiff suffered in the past;
- (3) any disfigurement or deformity and associated humiliation or embarrassment;
- (4) any inconvenience caused in the past and any that probably will be caused in the future; and,
- (5) any medical expenses incurred in the past.

The parties have stipulated to the medical expenses related to the injuries for which they agree Defendant is responsible. Specifically, they have agreed that the past medical expenses for the undisputed injuries was \$30,031.00. In addition to the agreed past medical expenses for the undisputed injuries, you must also determine whether the Plaintiff should receive an additional recovery for the other types of damages available as set forth in the first four categories for the undisputed injuries and, if so, what the value of those damages are. As to the disputed injuries, you must evaluate all five of the categories of damages to determine whether the Plaintiff should recover damages for the disputed injuries and, if so, the amount of the recovery for those injuries.

Your verdict shall be for such sum as will fully and fairly compensate the Plaintiff for the damages sustained as a result of the Defendant's negligence.

Instruction No. 3

Amount of Damages Requested Is Not Evidence

Any amount of damages requested is not evidence in this case; you should not consider it as evidence in arriving at your verdict.

Instruction No. 4

Burden of Proof

The burden is on the Plaintiff to prove by the greater weight of the evidence each item of damage she claims and to prove that each item was caused by the Defendant's negligence. She is not required to prove the exact amount of her damages, but she must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item. If the Plaintiff fails to do so, then she cannot recover for that item.

Instruction No. 5

Mitigation of Damages

The plaintiff has a duty to minimize her damages. If you find that the plaintiff did not act reasonably to minimize her damages and that, as a result, they increased, then she cannot recover the amount by which they increased.

Instruction No. 6

Effect of Insurance or Benefits

The presence or absence of insurance or benefits of any type, whether liability insurance, health insurance, or employment-related benefits for either the Plaintiff or the Defendant, is not to be considered by you in any way in considering the issue of damages.

The existence or lack of insurance or benefits shall not enter into your discussions or deliberations in any way in deciding the issues in this case. You shall decide this case solely on the basis of the testimony and evidence presented in the courtroom, as well as the other instructions given to you by the Court.

Instruction No. 7

Pre-Judgment Interest

For any damages that you award, you must determine whether to also award prejudgment interest to the Plaintiff as to those injuries that you find. The award of prejudgment interest is designed to compensate a plaintiff for the loss sustained by not receiving the amount to which she was entitled at the time that she was entitled to receive it. It is within your discretion to award or not award prejudgment interest.

Consequently, on the Verdict Form, you must first answer whether you have decided to award prejudgment interest. If you decide to do so, you must then indicate the date on which to begin the calculation of the interest. The date may be any date after the date of the incident at issue. If you decide not to award prejudgment interest, you should not enter any date on the Verdict Form in that section.

If you elect to award prejudgment interest, you should not be concerned with the interest rate or a calculation of the amount of the interest, as those issues fall with the purview of the Court.

Instruction No. 8

Juror Use of Electronic Communication Technologies

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, tablet, blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, Instagram, MySpace, LinkedIn, YouTube or Twitter to communicate to anyone any information about the case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you should become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case, because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations, because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

Instruction No. 9

Role of Foreperson

Upon retiring to the jury room, the foreperson will preside over your deliberations, just as he or she did during the liability phase of this trial. Your foreperson will be your spokesperson here in court.

A verdict form has been prepared for your convenience.

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form that sets forth the verdict upon which you unanimously agree. You will then return your verdict to the courtroom.

Instruction No. 10

Duty to Deliberate

The verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without disregard of individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times that you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

I again remind you that you must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely on the evidence and the instructions given by the Court.

Instruction No. 11

Jury's Responsibility

Nothing said in these instructions and nothing in any verdict form prepared for your convenience is meant to suggest or convey in any manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Instruction No. 12

Communications Between the Court and Jury

If it becomes necessary during your deliberations to communicate with me, you may send a note by a court security officer, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me by any means other than a signed writing. I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

The court security officers, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person — not even to me — how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Attachment 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SAMANTHA ROOP,
Plaintiff,

v.

Civil Action No.: 3:21cv675 (DJN)

NICHOLAS JAMES DESOUSA,
Defendant.

THE COURT'S JURY INSTRUCTIONS ON DAMAGES (PHASE 2)

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Instruction No. 1

Continuing Effect of Instructions

In the first phase of this trial, I provided you with instructions on what constitutes the evidence in this case, weighing and evaluating the evidence, and the meaning of “preponderance of the evidence.” Those instructions apply with equal force in this phase of the case. I will provide you with a written copy of those instructions for your deliberations. Additionally, you will be able to take these written instructions into the jury room with you when you deliberate.

In your deliberations, you may consider all of the evidence you have heard, unless it has been stricken. It does not matter whether it was introduced by the Plaintiff or the Defendant, or whether it was introduced in the first or second phase of this trial.

Instruction No. 2

Types of Compensatory Damages

In determining the damages to which the Plaintiff is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the Defendant:

- (1) any bodily injuries that the Plaintiff sustained and their effect on her health according to their degree and probable duration;
- (2) any physical pain and mental anguish that the Plaintiff suffered in the past;
- (3) any disfigurement or deformity and associated humiliation or embarrassment;
- (4) any inconvenience caused in the past and any that probably will be caused in the future; and,
- (5) any medical expenses incurred in the past.

The parties have stipulated to the medical expenses related to the injuries for which they agree Defendant is responsible. Specifically, they have agreed that the past medical expenses for the undisputed injuries was \$30,031.00. In addition to the agreed past medical expenses for the undisputed injuries, you must also determine whether the Plaintiff should receive an additional recovery for the other types of damages available as set forth in the first four categories for the undisputed injuries and, if so, what the value of those damages are.

Your verdict shall be for such sum as will fully and fairly compensate the Plaintiff for the damages sustained as a result of the Defendant's negligence.

Instruction No. 3

Amount of Damages Requested Is Not Evidence

Any amount of damages requested is not evidence in this case; you should not consider it as evidence in arriving at your verdict.

Instruction No. 4

Burden of Proof

The burden is on the Plaintiff to prove by the greater weight of the evidence each item of damage she claims and to prove that each item was caused by the Defendant's negligence. She is not required to prove the exact amount of her damages, but she must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item. If the Plaintiff fails to do so, then she cannot recover for that item.

Instruction No. 5

Mitigation of Damages

The plaintiff has a duty to minimize her damages. If you find that the plaintiff did not act reasonably to minimize her damages and that, as a result, they increased, then she cannot recover the amount by which they increased.

Instruction No. 6

Effect of Insurance or Benefits

The presence or absence of insurance or benefits of any type, whether liability insurance, health insurance, or employment-related benefits for either the Plaintiff or the Defendant, is not to be considered by you in any way in considering the issue of damages.

The existence or lack of insurance or benefits shall not enter into your discussions or deliberations in any way in deciding the issues in this case. You shall decide this case solely on the basis of the testimony and evidence presented in the courtroom, as well as the other instructions given to you by the Court.

Instruction No. 7

Pre-Judgment Interest

For any damages that you award, you must determine whether to also award prejudgment interest to the Plaintiff as to those injuries that you find. The award of prejudgment interest is designed to compensate a plaintiff for the loss sustained by not receiving the amount to which she was entitled at the time that she was entitled to receive it. It is within your discretion to award or not award prejudgment interest.

Consequently, on the Verdict Form, you must first answer whether you have decided to award prejudgment interest. If you decide to do so, you must then indicate the date on which to begin the calculation of the interest. The date may be any date after the date of the incident at issue. If you decide not to award prejudgment interest, you should not enter any date on the Verdict Form in that section.

If you elect to award prejudgment interest, you should not be concerned with the interest rate or a calculation of the amount of the interest, as those issues fall with the purview of the Court.

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Juror Use of Electronic Communication Technologies

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, tablet, blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, Instagram, MySpace, LinkedIn, YouTube or Twitter to communicate to anyone any information about the case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you should become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case, because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations, because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

Instruction No. 9

Role of Foreperson

Upon retiring to the jury room, the foreperson will preside over your deliberations, just as he or she did during the liability phase of this trial. Your foreperson will be your spokesperson here in court.

A verdict form has been prepared for your convenience.

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form that sets forth the verdict upon which you unanimously agree. You will then return your verdict to the courtroom.

Instruction No. 10

Duty to Deliberate

The verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without disregard of individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times that you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

I again remind you that you must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely on the evidence and the instructions given by the Court.

Instruction No. 11

Jury's Responsibility

Nothing said in these instructions and nothing in any verdict form prepared for your convenience is meant to suggest or convey in any manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Instruction No. 12

Communications Between the Court and Jury

If it becomes necessary during your deliberations to communicate with me, you may send a note by a court security officer, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me by any means other than a signed writing. I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

The court security officers, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person — not even to me — how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.